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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



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WEDNESDAY, APRIL 19, 2006  
1:38 P.M.



1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, APRIL 19, 2006

16 1:38 P.M.

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24 Reported by:

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26 Evelyn J. Mizak  
27 Shorthand Reporter  
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

PAUL G. GARDNER, III, Member  
State Board of Education

ALAN D. BERSIN, Member  
State Board of Education

SENATOR DEE DEE ALPERT

SENATOR JACK SCOTT

GAVIN PAYNE, Chief Deputy  
State Superintendent of Public Instruction

DAVE LONG, President  
California County Superintendents Educational Service  
Association

GLEN THOMAS, Executive Director  
County Superintendents Association



1 SCOTT PLOTKIN, Executive Director  
California School Boards Association

2 SHERRY SKELLY GRIFFITH  
3 Association of California School Administrators

4 SAM SWOFFORD, Executive Director  
5 California Commission on Teacher Credentialing

6 VINCENT RIVEROLL, Principal  
7 Gompers Charter Middle School

8 NARCISO GARCIA, Vice Principal  
Chollas-Mead Elementary

9 PATRICIA LADD  
10 Keiller Leadership Academy, San Diego

11 PETER T. LUFFRED  
12 Keiller Leadership Academy, San Diego

13 JAI SOOKPRASERT  
California School Employees Association

14 LYSA SASSMAN  
15 California Teachers Association

16 RAMONA VALLEJO-OHLIN  
17 Voters for Truth in Education

18 MIKE MacCARTHY, President  
19 Voters for Truth in Education

20 YVONNE CHAN, Ed.D., Member  
State Board of Education

21 EUNICE HERNANDEZ, Student  
22 Vaughn Next Century Learning Center

23 SHERRY SKELLY GRIFFITH  
24 Association of California School Administrators

25 KARI DOHN  
California Charter School Association

26 KENNETH A. NOONAN, Member  
27 State Board of Education

28 SENATOR DENISE DUCHENY

1 FERNANDO ELIZONDO, Executive Director  
2 California Association of Latino Superintendents and  
Administrators

3 LARRY ACEVES, Past President  
4 Association of California School Administrators

5 ANA DOWEY, Professor  
6 Palomar College

7 JIM WOODHEAD, Member  
8 Advisory Committee on Special Education

9 JEFF FROST  
10 California Association of Suburban School Districts

11 DAVID ANTHONY LEE, President  
12 Oceanside Teachers Association

13 EMILY ORTIZ WICHMANN, President  
14 Board of Education  
Oceanside Unified School District

15 LILLIAN V. ADAMS, Vice President  
16 Oceanside Unified School District

INDEX

	<u>Page</u>
Proceedings .....	1
<u>Governor's Appointees:</u>	
PAUL G. GARDNER, III, Member	
State Board of Education .....	1
Opening Statement .....	1
Questions by CHAIRMAN PERATA re:	
Future Career .....	3
Motion to Confirm .....	5
California ... ..	5
ALAN D. BERSIN, Member	
State Board of Education .....	6
Introduction and Support by:	
SENATOR DEE DEE ALPERT .....	6
SENATOR JACK SCOTT .....	8
GAVIN PAYNE, Chief Deputy	
State Superintendent of Public Instruction ....	10
Opening Statement .....	12
Questions by CHAIRMAN PERATA re:	
Update on Blending State and Federal	
Components of No Child Left Behind .....	15
Response to Schools Targeted for	
Program Improvement .....	17
Questions by SENATOR BATTIN re:	
Recent Speech to California School	
Boards Association regarding	
Position on Raising Taxes .....	19

Questions by CHAIRMAN PERATA re:

English Learner Situation .....	20
---------------------------------	----

Questions by SENATOR ASHBURN re:

Lack of Common Sense Coherence from Public Education System .....	28
Governor's Direction regarding Public Schools in California .....	28
Personal Goals and Timelines .....	30

Witnesses in Support:

DAVE LONG, Superintendent County of Riverside California County Superintendents Educational Service Association .....	31
--	----

GLEN THOMAS, Executive Director California County Superintendents Association .....	33
--	----

SCOTT PLOTKIN, Executive Director California School Boards Association .....	34
---	----

SHERRY SKELLY GRIFFITH Association of California School Administrators .....	34
---	----

SAM SWOFFORD, Executive Director California Commission on Teacher Credentialing .....	35
--	----

VINCENT RIVEROLL, Principal Gompers Charter Middle School .....	36
--	----

NARCISO GARCIA, Vice Principal Chollas-Mead School .....	38
---	----

PATRICIA LADD Keiller Leadership Academy .....	40
---	----

PETER LUFFORD Keiller Leadership Academy .....	41
---	----

Witnesses in Opposition:

JAI SOOKPRASERT California School Employees Association .....	43
--	----

1	LYSA SASSMAN	
2	California Teachers Association .....	45
3	RAMONA VALLEJO-OHLIN, Retired Teacher	
4	San Diego Unified School District	
5	Voters for Truth in Education .....	46
6	MIKE MacCARTHY, President	
7	Voters for Truth in Education .....	48
8	Questions by SENATOR ASHBURN re:	
9	Number of Members .....	51
10	Knowledge of Rousting Parents .....	52
11	Question to MR. BERSIN re:	
12	Direction to Roust Parents .....	52
13	Lack of Affidavits to Back up	
14	Accusations .....	52
15	Closing Statements by MR. BERSIN .....	53
16	Motion to Confirm .....	55
17	Committee Action .....	56
18	YVONNE CHAN, Ed.D., Member	
19	State Board of Education .....	56
20	Opening Statement .....	56
21	<u>Witnesses in Support:</u>	
22	EUNICE HERNANDEZ, Student	
23	Vaughn Learning Center .....	72
24	SHERRY SKELLY GRIFFITH	
25	Association of California School Administrators .....	76
26	KARI DOHN	
27	California Charter School Association .....	78
28	JIM WOODHEAD, Member	
	Advisory Commission on Special Education .....	84



1	Motion to Confirm .....	90
2	Committee Action .....	92
3	KENNETH A. NOONAN, Member	
4	State Board of Education .....	66
5	Opening Statement .....	66
6	Introduction and Support by	
7	SENATOR DENISE DUCHENY .....	75
8	<u>Witnesses in Support:</u>	
9	SHERRY SKELLY GRIFFITH	
10	Association of California School Administrators .....	76
11	FERNANDO ELIZONDO, Executive Director	
12	California Association of Latino	
13	Superintendents and Administrators .....	78
14	LARRY ACEVES, Past President	
15	Association of California School Administrators .....	81
16	ANA DOWEY, Professor	
17	Palomar College .....	82
18	JEFF FROST, Legislative Advocate	
19	California Association of Suburban School	
20	Districts .... .	86
21	DAVID ANTHONY LEE, President	
22	Oceanside Teachers Association .....	86
23	EMILY ORTIZ WICHMANN, President	
24	Board of Education	
25	Oceanside Unified School District .....	88
26	LILLIAN ADAMS, Vice President	
27	Board of Education	
28	Oceanside Unified School District .....	89
	Motion to Confirm .....	90
	Committee Action .....	92
	Termination of Proceedings .....	92
	Certificate of Reporter .....	93

## APPENDIX: ..... 94

Written Responses to Committee Questions  
By Appointees, as well as Written  
Statements by Appointees Not Required to  
Appear: Member, Boating and Waterways  
Commission: EDWARD C. RENO III; Members,  
Board of Pilot Commissioners for the  
Bays of San Francisco, San Pablo and  
Suisun: MICHAEL KNUTE MILLER and  
MIZHAEL B. SITTS; Members, San Francisco  
S Bay Conservation and Development  
Commission: LAWRENCE J. GOLDZBAND,  
COLLEEN M. JORDAN, STAN Y. MOY, and  
RAYMOND S. RANDLOPH, Ph.D; California  
Poet Laureate: ALBERT J. YOUNG

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to call first the student volunteer, Paul Gardner the Third. Would you come forward, please.

Paul, you're the student representative?

MR. GARDNER: Yes.

CHAIRMAN PERATA: Welcome.

MR. GARDNER: Thank you.

CHAIRMAN PERATA: Would you like to say a little something about yourself, and why you want to do this?

MR. GARDNER: Sure, a very brief statement.

Yes, I am doing this, and I'm near the tail end of my term. I serve for one year on the Board of Education.

I found out about this position -- obviously, I've known about the State Board all my life -- I had no idea, though, that a student was required to serve on it and actually had voting privileges. And this struck me as very profound, and another reason why I'm proud to live in California. And I found out about this position in my tenth grade year; couldn't apply until a year later but was already very excited.

And I've been a member of the public school system since second grade. And kindergarten-first grade, private school, and then my parents rightly realized that I could get the same or better education for a heck of a lot less, and so they took me out and put me in the public school system.

CHAIRMAN PERATA: Philosophical commitment, I guess?

[Laughter.]

MR. GARDNER: Yes.

CHAIRMAN PERATA: Are your parents here?

MR. GARDNER: My mother is here.

CHAIRMAN PERATA: Would you like to introduce your mother?

MR. GARDNER: I'd like to introduce my mom, Molly Mesmer.

CHAIRMAN PERATA: Welcome, Mom.

MR. GARDNER: And so, it was with the education that I've gotten through the public school system, and how proud I am of far that I've come, I knew that I wanted to represent all the rest of the students in California. And it's because of the education I received that I felt capable of doing so.

And it has been very interesting, seeing some of the point of views while I've been on the board because I've grown up with standardized education. It's all that I know. And it's only in coming to the State Board that I realize it's not the only thing that everybody else in the room knows. And I hear different kinds of philosophies thrown out that have been tried in California since the state began, and that we've only now moved to standardized education to make sure that all students receive a quality education.

It's all that I've known, and I can say honestly that while the system might have a few kinks here and there, by and large it is great. And traveling to other states, talking to some of my friends, they are jealous of the kind of education that I get, because I come from a middle-class family. I go to



1 Culver City Unified. I don't go to this great school, this  
2 great private school, or this school located in a rich district.  
3 I go to your run-of-the-mill public school. And it's because it  
4 is so average, and yet we get such an amazing education there  
5 that I truly wanted to be on the Board and preserve that, while  
6 fixing a few minor disadvantages.

7 I do stand by all the votes that I've had on the  
8 Board, and I do feel very strongly about where this Board is  
9 taking California's education in.

10 And with that, you know, I hope that I am  
11 confirmed so that I can attend my final two Board meetings.

12 [Laughter.]

13 MR. GARDNER: I just wanted to say that it has  
14 been a very great year. And I'm a high school student, and I'm  
15 so glad that I got to experience this. It's an amazing, amazing  
16 experience.

17 CHAIRMAN PERATA: Tell me you don't want to be a  
18 lawyer.

19 MR. GARDNER: I do not.

20 CHAIRMAN PERATA: God bless you.

21 [Laughter.]

22 SENATOR ASHBURN: Or a politician.

23 CHAIRMAN PERATA: My next question was, would you  
24 like to run for the Assembly?

25 [Laughter.]

26 MR. GARDNER: I do not want to be a lawyer. I've  
27 been in mock trial for seven years, since I started the middle  
28 school, and I work at a law firm. And I can honestly and



1 sincerely say that I do not want to be a lawyer.

2 CHAIRMAN PERATA: That's like childhood  
3 punishment. That's abuse.

4 MR. GARDNER: As far as being a politician,  
5 though, I don't know necessarily if I want to be a politician.  
6 I do know, however, that I kind of already am. It is an  
7 interesting experience. I am a full member on the State Board  
8 of Education, and those of you who are familiar with Youth in  
9 Government through YMCA, I've been in that program since tenth  
10 grade, and I just recently served as the Youth Governor of the  
11 state for this past year.

12 So, I am already intimately involved with  
13 politics, and I can say that I do enjoy it.

14 I will be going to school at Harvard in the fall,  
15 and I know --

16 CHAIRMAN PERATA: We've heard of that.

17 MR. GARDNER: I know that once my four years are  
18 done, I probably won't be able to wait to come back to  
19 California, not just because of the change in weather, but  
20 because I want to come back and use what I've learned to make  
21 California even better.

22 CHAIRMAN PERATA: Would you do me a favor? If  
23 anybody starts messing with your head back there, just stay away  
24 from two things: law school and an MBA.

25 MR. GARDNER: Okay.

26 CHAIRMAN PERATA: You seem like you have really,  
27 really good potential.

28 You've acquitted yourself beautifully. I think

1 we've all benefitted greatly by your being there.

2 You could also be a political consultant and run  
3 a bunch of politicians and tell them what to do. It's more  
4 efficient that way. You can do six or ten of them.

5 Congratulations, and we will approve you so you  
6 can go with confidence into your last couple of meetings.

7 [Laughter.]

8 MR. GARDNER: Thank you, Senator.

9 CHAIRMAN PERATA: That would be awful if you were  
10 a prophet without honor in your own time. So, thanks so much.  
11 Thanks, Mom, for being here. We all wish you very well in your  
12 future endeavors. And thanks for making the state so proud and  
13 the system. CTA ought to hire you.

14 Do we have a motion?

15 SENATOR BATTIN: Yes.

16 CHAIRMAN PERATA: Motion to approve. Please call  
17 the roll.

18 SECRETARY WEBB: Ashburn.

19 SENATOR ASHBURN: Aye.

20 SECRETARY WEBB: Ashburn Aye. Bowen.

21 SENATOR BOWEN: Aye.

22 SECRETARY WEBB: Bowen Aye. Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Battin.

25 SENATOR BATTIN: Aye.

26 SECRETARY WEBB: Battin Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Five to zero.

1 CHAIRMAN PERATA: Congratulations.

2 MR. GARDNER: Thank you very much.

3 [Thereupon the Committee acted  
4 upon legislative items.]

5 CHAIRMAN PERATA: We'll now go to next item.

6 Alan Bersin, would you like to come forward.

7 And Paul, I want to point out to you, he graduated  
8 from Harvard, then he went to law school.

9 Welcome.

10 Did you want to introduce him? We have a number  
11 of people who'd like to introduce you.

12 SENATOR ALPERT: Thank you, Mr. President.

13 Yes, it is my honor and pleasure to be here today  
14 to introduce Alan Bersin to you.

15 I was going to actually talk about --

16 SENATOR BATTIN: Who are you?

17 SENATOR ALPERT: I'm Dee Dee Alpert.

18 SENATOR BATTIN: My favorite former chair.

19 SENATOR ALPERT: Thank you, Senator Battin.

20 I was going to actually start with the fact that  
21 he had gone to Harvard and Yale, and was for a number of years a  
22 lawyer and then the U.S. Attorney in San Diego, but  
23 understanding that that doesn't seem to really please you, I  
24 wanted to let you know that the good news was, he saw the light  
25 and became the Superintendent of Schools instead. And that's  
26 where I really had the opportunity to work with Alan, was when  
27 he was Superintendent of Schools in San Diego.

28 Many of you may know, San Diego is the second

1 largest school district in the state. And I think that  
2 traditionally we always felt that San Diego wasn't too bad an  
3 urban school district, but that, I think, the reality is, that's  
4 really damning with faint praise when you talk about that.

5 When Alan came to the school district, he made  
6 some dramatic changes. And because of it, he was a  
7 controversial superintendent. There were some, I think,  
8 mistakes he made, as well as some wonderful things that he did.  
9 But I think you have to acknowledge that what he started from  
10 was recognizing that, he looked at the performance of students  
11 in San Diego Unified School District, and he looked at the  
12 performance of English language learners. He looked at the  
13 performance of students of color, and he looked back over a  
14 period of 30 years.

15 And basically what he saw is that all the things  
16 we said we were doing to actually change performance and  
17 actually do something about the achievement gap, nothing had  
18 worked. And you just can't go on doing the same thing, year  
19 after year, and promising these kids that they're going to get a  
20 decent education, that they're going to have real opportunity,  
21 if you don't make changes.

22 And so, Alan introduced a brand-new program in  
23 San Diego where he really focused in on the basic skills,  
24 acknowledging that if you cannot read, and if you cannot do  
25 arithmetic, there is no way that then you can go on to learn and  
26 actually succeed in today's society. And as I say, that was a  
27 sea change that was very dramatic and in some ways a difficult  
28 one. But he hung in there. He stayed with it.



1                   His heart has always been with the idea that  
2 public school education is to educate all children, and to give  
3 all children real opportunity.

4                   I think as the Governor's chief advisor on  
5 education, as our Secretary of Education, you've been able to  
6 see in the time that he's been there what a visionary he is, the  
7 work that he has done. He has really, I think, made a  
8 tremendous, tremendous difference. And now, as a Member of the  
9 Board of Education, he's able to bring that to the Board of  
10 Education as well.

11                  You know, oftentimes when we look at people who  
12 take these jobs as things like the Secretary of Education, I  
13 believe that Alan is the first person actually who was a  
14 superintendent and now has taken on that role. He actually  
15 knows how this works. He knows what's happening on the ground.  
16 He understands the students, the teachers, and the  
17 administrators.

18                  So, he brings great, great strength, I think, to  
19 both roles, and so I am absolutely delighted to be here as part  
20 of a team with Senator Scott to introduce Alan and to urge your  
21 approval of his nomination.

22                  CHAIRMAN PERATA: Thank you, Senator.

23                  Senator Scott.

24                  SENATOR SCOTT: Yes. I would say these things  
25 about Alan Bersin. He has, of course, an extremely impressive  
26 resume, not only his education, but the fact that he was a  
27 Rhodes Scholar.

28                  But the fact that when he was an attorney, he



1 decided to leave that job and become Superintendent of Schools.  
2 And as someone who has been an administrator in education, I  
3 have often said that the toughest job in America is to be  
4 superintendent of a large urban school. Imagine having to  
5 answer to a changing board at times, placate a group of angry  
6 parents, address the concerns of the union, do all of those  
7 things.

8 And I want to compliment Alan Bersin for the  
9 service that he gave to the schools of San Diego.

10 But I guess the reason I come here  
11 enthusiastically is that since he's been here in the Capitol,  
12 he's made a tremendous difference. As Chair of the Senate  
13 Education Committee, I've worked closely with Alan on quite a  
14 number of projects. I have found the passion that Senator  
15 Alpert referred to, his passion for students.

16 Today, for instance, I had a controversial bill,  
17 Senate Bill 1655, that got out of the committee after some  
18 discussion, got out unanimously, I might add, but we did have  
19 discussion. But it was Alan Bersin who helped me in framing  
20 that bill, and talking to him about the bill, who knew the  
21 circumstances that it addressed in terms of putting some  
22 strictures on voluntary transfers within large urban districts.

23 I've found him to be very open on so many other  
24 issues. He's brought a real spirit of bipartisanship into the  
25 area of education here in the Capitol. And so, I've been  
26 extremely pleased to work with him, and I enthusiastically  
27 support placing him on the State Board of Education.

28 CHAIRMAN PERATA: Thank you, Senator.

1                   SENATOR SCOTT: And I must leave because I'm  
2 about to go to another committee.

3                   CHAIRMAN PERATA: That's okay, you can run.  
4 Gavin Payne.

5                   MR. PAYNE: Good afternoon, Mr. Chairman and  
6 Members.

7                   I am here today as a substitute for  
8 Superintendent O'Connell, who is at home attending to family  
9 matters, of course.

10                  CHAIRMAN PERATA: For the record.

11                  MR. PAYNE: Gavin Payne.

12                  If you will permit, I'd like to make a brief  
13 statement about all four of your nominees today, and in the  
14 interest of time be done with it. So, I'm respecting the large  
15 crowd behind me here.

16                  We're here in support of all four nominees to the  
17 State Board of Education, and let me take Mr. Bersin first.

18                  You obviously have the letters that  
19 Superintendent O'Connell has sent on behalf of all four.

20                  Before I get into the remarks about Mr. Bersin, I  
21 want to make one offer to Mr. Gardner. And that is, come back  
22 after Harvard and there's job with Superintendent O'Connell.

23                               [Laughter.]

24                  MR. PAYNE: Mr. Bersin has had, from  
25 Superintendent O'Connell's perspective, has had a constant eye  
26 toward improving efficiency and innovation in existing education  
27 programs. And we've engaged quite well and quite deeply on a  
28 number of both federal and state matters. We have developed a

1 very good close working relationship with Mr. Bersin.

2 There are a lot of issues that we face in  
3 education, and we find that people of good will and honor,  
4 nothing, no construction of government, can get in the way as  
5 long as the people are acting well together. And we find that  
6 to be the case with Mr. Bersin especially. So, we support him  
7 very strongly.

8 Ms. Chan, of course, has an unabashed dedication  
9 to the success of students in California by her entire career in  
10 what she has done. She approaches each issue individually as it  
11 comes to the Board and is probably the most incisive questioner  
12 of state department staff. And her questions are invariably  
13 good, and we have to prepare very well for them.

14 Mr. Noonan gets Superintendent O'Connell's strong  
15 support because he brings a wealth of experience to the State  
16 Board. Most recently, of course, because he's on the ground,  
17 he's in the field. He's the Superintendent of Oceanside, and  
18 has done extraordinary work there. He's got more than 25 years'  
19 experience as a practicing educator and as an administrator.  
20 And he is serving the Board very well as that body's Vice  
21 President.

22 You've heard what I offered to Paul, I'll leave  
23 it at that on that one.

24 Thank you for your forbearance this afternoon.

25 CHAIRMAN PERATA: Thank you.

26 MR. PAYNE: Good luck with your deliberations.

27 Thank you.

28 CHAIRMAN PERATA: Your turn.

1 MR. BERSIN: Members of the Committee, and  
2 Mr. Chairman, I'm delighted to be here. I must say, we had a  
3 very interesting meeting at the State Board on Monday, and Paul  
4 Gardner, before speaking, allowed as though -- and he spoke  
5 after me -- he said that it was -- he found it difficult to say  
6 what he was going to say after I had spoken, and I return the  
7 favor today. It is an honor to appear in his wake.

8 I also have a personal note from my wife and  
9 friend, Lisa Foster, who's a Superior Court judge in San Diego,  
10 who, when I asked her if she would accompany me here today to  
11 this important occasion and petitioned, she said that she wished  
12 she could, but as we convened here at 1:30, she was reconvening  
13 a large criminal trial in San Diego. So, she denied my motion,  
14 but asked me to please extend her greetings and, I think I can  
15 say, her support for me.

16 This opportunity is an important one for a number  
17 of reasons, and I was pleased to be named to the State Board at  
18 the same time that I was honored to be appointed the Secretary  
19 of Education by the Governor, thinking that it was an  
20 opportunity to accomplish at least two objectives that followed  
21 on my seven-year service in San Diego.

22 The first was to be able to inform state policy,  
23 both in terms of budget policy as initially proposed by the  
24 Governor, and then as dialogue with the Legislature. But also  
25 in the context of the State Board, to bring to bear seven years  
26 of experience of being on the receiving and implementing end of  
27 state policy, both from the State Board and from the Legislature  
28 and the Governor.



1           And in terms of that experience, I think that  
2 being a former practicing superintendent puts me in a position,  
3 as it does Ms. Chan as a principal in Los Angeles, Mr. Noonan as  
4 a superintendent in San Diego County, to weigh and consider  
5 these critically important matters from the standpoint of deep,  
6 intense experience with the challenges of urban public  
7 education.

8           The second purpose and objective of being on the  
9 Board is to bridge the separation of powers, frankly, that  
10 exists in all government as determined by our Constitution here  
11 in California as well as nationally, but also particularly in  
12 the area of education, where we do, truth be told, have a  
13 peculiar governing structure. We have a Governor and a  
14 Legislature; we have a Superintendent of Public Institution who  
15 is a Constitutionally elected officer; we have a State Board of  
16 Education that is appointed by the Governor and confirmed by the  
17 State Senate; and we have the State Secretary of Education, and  
18 we have a coalition, an education coalition of informed  
19 stakeholders.

20           It is difficult in the context of this separation  
21 of governance responsibilities to accomplish changes and  
22 implement constructive revisions in state policy. I see this  
23 opportunity as being able to find, help find the common ground,  
24 to build on relationships between the Governor's Office and the  
25 Legislature with the State Board, as well as with stakeholders.

26           For that reason, Senators, I've been -- since  
27 beginning last May on the State Board and July as Secretary of  
28 Education, I've traveled all over the state, met with teachers

1 and parents, school administrators and superintendents,  
2 principals and vice principals. And I've done a number of  
3 communication functions, between explaining the Governor's  
4 policy, and also bringing back to the Governor's Office and to  
5 the State Board the impact that state policy is having in the  
6 field.

7           There is much work to be done in public  
8 education, but as Paul Gardner so eloquently stated it, and I  
9 being a little longer in the tooth than he is, I have earned the  
10 wonderful right in life to do exactly what I choose to do. And  
11 I choose to do it with public education.

12           I'm the product of a public education background,  
13 my family. I believe that it is the institution in American  
14 life that distinguishes us from every other society that has  
15 existed either vertically in history or horizontally now on the  
16 planet. If we provide a quality educational opportunity to our  
17 young people, that is our obligation as a society. I'm an  
18 existence proof of what a second generation immigrant family can  
19 achieve in terms of opportunity through the public school  
20 system.

21           This is the institution most -- the most  
22 important institution in our California today and in our  
23 society. The future foundations of our economy and our social  
24 life depend upon a vibrant public education, an education that  
25 gives children the opportunity to learn, and to learn with an  
26 equal educational opportunity that, for most of American  
27 history, frankly, has not been there.

28           My objective is to then to inform by my local



1 experience, by my passion for public education, but also my role  
2 as Secretary of Education, to work to bring quality public  
3 education to each of California's children, and in so doing, to  
4 narrow the academic achievement gap on the way to closing it,  
5 which I take it to be the preeminent challenge of our generation  
6 here today.

7 Senator, I'm obviously prepared to answer more  
8 questions and to go on further if you'd like, but I'll take my  
9 guide from your direction.

10 CHAIRMAN PERATA: Thank you.

11 I had one question that pertains to No Child Left  
12 Behind. Maybe you can give us a brief update on how we're  
13 blending state and federal components?

14 MR. BERSIN: Senator Perata, as you know, we are  
15 faced with a peculiar accountability dilemma here in California.  
16 In 1999, through the efforts of Senator Alpert and many of you,  
17 we introduced the Academic Performance Index, a system based on  
18 the growth model, looking at how schools do from year to year in  
19 terms of their growth against a set of determined targets.

20 Two years later, alongside the growth model of  
21 the Academic Performance Index, the federal government in a  
22 bipartisan way, as was Public School Accountability Act here in  
23 California a bipartisan enactment, implemented No Child Left  
24 Behind, which is a status -- sets a series of status  
25 requirements. That is, indicates at various plateaus what  
26 number of students need to be proficient, according to the state  
27 standards of English language arts and mathematics.

28 The consequence of that is that we have two

1 accountability measures that are actually quite different. In  
2 my mind they each can play a role, but to the parents, to many  
3 of our -- of my colleagues, and indeed, for a long time to  
4 myself inside the system, the existence of these conflicting  
5 systems of accountability lead to confusion and lack of  
6 comprehension, such that a school that on Thursday would be  
7 called a school that is making progress under the state system,  
8 could under the federal system the next Tuesday be called a  
9 school in need of program improvement.

10 One of the measures that I sought, with the  
11 Governor's approval and with the encouragement of Legislators,  
12 as well as with the cooperation and the desire of Superintendent  
13 O'Connell and the State Board was to initiate an effort with the  
14 federal government to find a harmonized, if you will, measure of  
15 accountability that will permit us to blend the accountability  
16 of growth with the accountability of making certain milestones  
17 and benchmarks along the way.

18 Secretary Spellings appointed a subcommittee of  
19 Undersecretary Ray Simon and Tom Luce, the federal department's  
20 assessment expert, and Governor Schwarzenegger appointed  
21 Superintendent O'Connell, President of the State Board, then  
22 Ruth Green, now Glee Johnson, and myself to the state  
23 committee. And we have been working to develop a harmonized  
24 metric or measure.

25 Where we are, Senator, is that having convened a  
26 group of experts, psychometricians they're called technically,  
27 to try to find this harmonized measure, we discovered that it's  
28 going to be a lot more difficult than even we thought going into

1 it. We have submitted again to the federal department a growth  
2 model based on the API, asking that it be considered the AYP, or  
3 Adequate Yearly Progress measure, and expect that there will be  
4 less of a flat closing-of-the-door on that; although, we do not  
5 expect it to be accepted by the Federal Department of Education.  
6 Nonetheless, we expect that Secretary Spellings will invite  
7 California to continue to try to work toward that.

8 More briefly, and on a second front in which  
9 there has been a real incompatibility between federal and state  
10 systems is between our systems of dealing with underperforming  
11 schools in California, the so-called IIUSP, Immediate  
12 Intervention Underperforming School Program, which actually  
13 sunsets this year, our high priority school grant program, the  
14 HP program, which has a set of requirements that do not  
15 completely mesh with the federal program improvement.

16 As one instance of finding common ground and  
17 forging agreement, we have been working with Superintendent  
18 O'Connell and the Department of Education to develop a unified  
19 framework for intervention that would be a state system that  
20 would be compatible with federal law that we hope we can, over  
21 time, bring forward for consideration by the Legislature.

22 So the short answer, Senator, is that there's  
23 much work to be done, but we are working at it. And we're  
24 working at it in a cooperative fashion, both with federal  
25 authorities, and perhaps even more importantly, within our state  
26 family.

27 CHAIRMAN PERATA: What's the response to schools  
28 that are targeted program improvement? How are you helping

1       them?

2                   MR. BERSIN: The existing programs involve an  
3       investment of resources, together with a requirement of an  
4       intervention when the schools do not, for a period of two years,  
5       meet their targets. That is generally the same regime under the  
6       state and federal system, but there are different methods of  
7       intervention.

8                   In the state system, we use School Assistance and  
9       Intervention Teams. The Superintendent and the department have  
10      come forward with a proposal for six schools that have not done  
11      well under any of the intervention programs, and in at least two  
12      of the cases has recommended that a trustee be appointed to  
13      oversee certain school improvement measures, which usually  
14      involve assuring the presence of institutional materials that  
15      meet state standards, professional development programs for  
16      teachers and administrators, and support for supporting parent  
17      involvement in the education of their children.

18                   This is an intervention, though, that we believe  
19      needs to be targeted to the most underperforming schools so that  
20      we can mass our resources and make the investments that will  
21      actually make a difference in the schools that need the most  
22      assistance and help.

23                   CHAIRMAN PERATA: Roughly how many of them are  
24      there?

25                   MR. BERSIN: Well, there have been about 400  
26      schools in the programs of improvement now. If we went  
27      according to the federal system in terms of the status  
28      requirements of program improvement, more than 20 percent of



1 California schools, and more than 1800 of them are in federal  
2 program improvement.

3 The issue, Senator, that I think faces the  
4 Governor, the Legislature, the State Board, the department and  
5 the education coalition is, we do not have the capacity to  
6 intervene meaningfully in 1800, let alone 2500 of California's  
7 schools.

8 The issue is, how do we determine and distinguish  
9 between those schools that are making progress from those  
10 schools that are not making progress or losing ground? And  
11 then, what are the specific intervention measures that we can  
12 address to bring an equal educational opportunity to the  
13 students of those schools?

14 CHAIRMAN PERATA: Questions? Senator Battin.

15 SENATOR BATTIN: Thank you, Mr. Bersin, for  
16 coming.

17 As you know, I have an issue based on a speech  
18 that you had given at the California School Boards Association,  
19 where it was reported that you had said that you wanted to use  
20 your platform and this position as Governor's education advisor,  
21 and also in your position here, as an opportunity to make the  
22 case for raising taxes.

23 I brought that up in our caucus when you came,  
24 and we sat down in our office, and we talked about it at great  
25 length. And I appreciate your candor and being forthright  
26 there.

27 I just want to get you on the record here. So, I  
28 would just ask you if that is indeed what you said, or if you



1 would again reiterate that you do not support increasing taxes?

2 MR. BERSIN: Senator Battin, as you -- as we did  
3 end up agreeing at the end of a long process that I did not -- I  
4 did not call for increasing taxes in that speech.

5 I understood when I took this job that I was  
6 going to work for a Governor who believes very strongly that  
7 taxes, or an increase in taxes, is not in order. It's not the  
8 way to produce an increase in the economy that would lead to  
9 additional, and has in the last two years led to additional  
10 revenues.

11 What I did say in that speech, which I believe  
12 you've listened to and both read the transcript, is that we in  
13 the education world must be prepared to talk about the  
14 productivity of the use of the resources that have been  
15 allocated to us if, in fact, we ever want to engage in the  
16 discussion of additional revenues for schools beyond what is  
17 ordinarily provided by the operation of Prop. 98.

18 But for the record, because I understood the  
19 position of the Governor for whom I work, and for whom I'm  
20 honored to work, that he is absolutely against increasing taxes,  
21 and that's a position I'm pleased to support.

22 SENATOR BATTIN: Thank you.

23 CHAIRMAN PERATA: For the record, Senator Battin  
24 endorses that position as well.

25 [Laughter.]

26 MR. BERSIN: I've gathered that.

27 CHAIRMAN PERATA: I had one other question.

28 Bring us up to date on the English learner

1 situation.

2 MR. BERSIN: Senators, this is -- was the subject  
3 of a difficult State Board of Education meeting this past  
4 Monday, a special Board meeting, that actually had taken up the  
5 adoption for 2008 under the English language arts, English  
6 language development framework here in California.

7 Let me provide in summary form the background.  
8 Remember the revolution that this Legislature and the Governor  
9 and the education world coalition began in 1997, with the, for  
10 the first time, the adoption of standards, the introduction of  
11 the standards-based education here in California, that set forth  
12 that each grade level, K-12, what we expect our students to know  
13 and be able to do in each of the six core academic subjects:  
14 science, mathematics, English language arts, visual and  
15 performing arts, social studies, and physical education.

16 What we need our students to do. Not comparing  
17 students to other students, but comparing each of our students  
18 to a fixed standard of what that young person, boy and girl,  
19 must know in order to graduate from our high schools prepared to  
20 participate meaningfully in California's future.

21 That was a revolutionary breakthrough and was  
22 followed up in 2002 as a matter of implementation by adopting,  
23 after the framework for English language arts was adopting  
24 [sic], was doing the first institutional cycle for materials in  
25 which the Curriculum Commission makes recommendations to the  
26 Board of Education for materials, books and materials, that  
27 would implement the English language arts standards.

28 We've now run through one cycle of that

1 instructional material purchase in which the State Board has  
2 given criteria to publishers. The publishers have responded.  
3 School districts around the country have actually purchased from  
4 among the options on the state-approved list books and  
5 materials.

6 When we come to the end of the first adoption in  
7 2006, we start to plan for the next adoption in 2008, but it is  
8 an extended process by which criteria developed by the  
9 Curriculum Commission, brought to the State Board, and then  
10 given to the publishers, who will come back with materials for  
11 consideration by the State Board to put out on our approved  
12 materials list, and then districts will then choose from those  
13 materials to implement the English language arts standards.

14 Ninety percent of the work that was presented to  
15 the State Board in March was noncontroversial. This recognized  
16 that, in fact, we have made progress in English language arts  
17 and in meeting the standards, but that we have one huge issue  
18 which remains to be addressed successfully, and we are not  
19 anywhere near doing that in California. That is the issue of  
20 English language learning.

21 Senators, 25 percent of California's students are  
22 English language learners. It is the great hope and the great  
23 promise, if we can educate this generation of students,  
24 including our English language learners, to a high level, it  
25 will be the next big lift to California history and, I believe,  
26 national history. But it is a huge challenge, and a huge issue  
27 instructionally.

28 Indeed, I have said in both my role as

1 superintendent and as member of the State Board, and as the  
2 Secretary of Education, that the number one instructional issue  
3 in California today is English language learning, and providing  
4 the support for English language learners that we will need so  
5 that they can become proficient and advanced in this area.

6 The fact is that we are making progress. And the  
7 adoption of standards, and the purchase of instructional  
8 materials in the first cycle have led to progress. All student  
9 groups, all sub groups of students have made progress in terms  
10 of meeting the proficiency standards that have been set pursuant  
11 to the Legislature's direction and the State Board's immediate  
12 action.

13 However, and this is an area of great concern to  
14 all of us as Californians, and particularly to us educators, the  
15 gap between groups of students, most Asians and most Caucasians  
16 on the one hand, and most Latinos and African-Americans and  
17 Indochinese students on the other hand, or native American  
18 students, is not actually narrowing, particularly with regard to  
19 English language learners.

20 So, the issue that was at stake in this adoption  
21 was, do the materials actually provide sufficient support for  
22 teachers to assist English language learners to master the  
23 English language or its contents standards?

24 Ladies and gentlemen, we've come to a huge sea  
25 change in California in terms of what we are debating when we  
26 talk about that issue. We are now talking about, by universal  
27 consensus, and this means from one end of the spectrum to the  
28 other end of the spectrum, about one standard and one



1 assessment. We are going to meet the English language arts  
2 standards, and we're going to use the California Standards Test  
3 to assess our progress in that area.

4 Having said that, how we get there is an issue  
5 that is a continuing challenge to us. One of the materials that  
6 we have to develop is to mesh English language development, ELD,  
7 with English language arts standards. How do we provide a  
8 bridge for our English language learners in terms of English  
9 language development to meet the English language arts  
10 standards?

11 Every teacher will tell us, and many have told  
12 me, that early reading requires English language development.  
13 You must have an oral language development before you can begin  
14 to read successfully.

15 So, the issue that was before the State Board --  
16 and remember again, this was a critical 10 or 15 percent of the  
17 materials -- the English language arts framework and the English  
18 language development framework is acceptable, and I think was  
19 broadly acceptable to all of the members of the Board.

20 There were five options that were proposed by the  
21 Curriculum Commission to the State Board. The first option was  
22 the so-called basic program, mostly directed to native English  
23 speakers.

24 The second program was the English language arts,  
25 English language development standards, which was that basic  
26 programming tended to address English language development needs  
27 for most English language learners.

28 The third program was the waiver program. Those



1 families that elect to waive into primary language programs, as  
2 they're entitled to do under Proposition 227. Option three  
3 addressed that group of students and families.

4 And the last two programs, options four and five,  
5 option four addressed an intervention program in grades four  
6 through eight for students who were falling behind in terms of  
7 grade level.

8 And option five was an intervention program for  
9 grades four through eight for students who are English language  
10 learners who were falling behind and needed the special  
11 intervention.

12 I think there was no dispute over options one,  
13 three, four, and five, or indeed material difference over the  
14 framework.

15 The issue for us was option two, and the proposal  
16 by many teachers and advocacy groups that there be a separate --  
17 and Members of the Legislature -- that there be a separate  
18 option six that would address solely, would solely be addressed  
19 to the needs of English language learners.

20 Option two is a combination of the English  
21 language arts program, the basic program: two-and-a-half hours  
22 followed by an hour program for English language development.  
23 The materials and the criteria would be aligned to the needs of  
24 English language learners to meet the English language arts  
25 standards.

26 Option six was proposed by other groups, not the  
27 Curriculum Commission, by Member Goldberg, by Californians  
28 Together, saying that we needed a separate curriculum that would

1 be directed to helping English language learners meet the  
2 English language arts standards. This was not about not meeting  
3 the standards. It was about how to do that most effectively.

4 Let me jump to the conclusion and then -- in  
5 order to give you the background leading up to it.

6 At the end of the Board meeting, the Board voted  
7 six-to-four to adopt the five options as proposed to the Board.  
8 But there had been significant change in option two, not as much  
9 as some people wanted to see.

10 But when the matter was brought to the March  
11 Board meeting, I and several other members of the Board took the  
12 position that we did not see a record of the Curriculum  
13 Commission having considered adequately the issues of ELD  
14 development, English language development. And we asked that  
15 there be an effort made to find middle ground to forge a  
16 consensus position over this very important instructional issue.

17 And the fact is that between March and the  
18 meeting on Monday, there were meetings that involved ACSA, that  
19 involved Californians Together, that involved the Los Angeles  
20 County Board of Education, that involved the Department of  
21 Education, and that involved State Board staff and State Board  
22 President Glee Johnson.

23 Option two was modified, and modified in  
24 important ways, but not modified sufficiently to meet the  
25 objections of those who said we needed a separate option six to  
26 address English language development. So when it came before  
27 the Board, I felt and moved that we had not actually developed a  
28 record that would reflect a fair consideration of all of the

1 competing considerations that are at stake here.

2 I suggested that in fact the perception, which I  
3 had learned both as the Secretary of Education, being here on  
4 the ground in Sacramento every week, that people -- my  
5 colleagues may seriously have underestimated the extent to which  
6 the Board is perceived as rigid, nonresponsive, inflexible, and  
7 in fact that the Curriculum Commission had not fairly considered  
8 all of the options in a way that would permit us to talk  
9 seriously to Legislators, as well as to constituents, as well as  
10 to stakeholders, to say here is exactly what was considered, and  
11 here are the reasons why it was rejected.

12 To my mind, there was no adequate record there.  
13 And I asked that we -- I moved that we would consider it through  
14 July. We would send the parties back to the table to find  
15 middle ground, to make what further changes, and at the very  
16 least, if not recommending an option six or further changes in  
17 option two, at least have a reasoned statement that would set  
18 forth what the contentions were and permit the State Board to  
19 consider in much fuller fashion than we had been able to the  
20 competing considerations here.

21 That motion then was the subject of considerable  
22 discussion, and my colleagues asked if a vote could be taken on  
23 the original proposition, if I would defer consideration of that  
24 motion. And after being asked to do that by two colleagues, I  
25 agreed, and that's when the motion that was adopted six-four was  
26 actually passed by the Board.

27 But I think, Senators, what is different is that  
28 we understand that this is a debate that will not stop. In

1 fact, when the publishers come back to us with materials, a lot  
2 of the work that was done to improve option two, and a lot of  
3 the considerations that people have brought forward with regard  
4 to option six will, in fact, affect the deliberations of the  
5 Board with respect to what actual materials will be approved for  
6 sending out to the field.

7 SENATOR ASHBURN: Question.

8 I'm not sure, Mr. Secretary, you helped yourself  
9 with the explanation that you just gave us because I, for the  
10 life of me, have no idea what you said. And I like you. And I  
11 have great respect for your capability.

12 But I think it reflects a problem that I'm  
13 having, and maybe my problem is the same problem that other  
14 parents and taxpayers throughout California are having, which  
15 is, why can't we make some common sense coherence from our  
16 public education system?

17 And so, maybe the way I would get to my point is  
18 this. I know Governor Schwarzenegger just a little bit. He  
19 tends to be quite direct.

20 I'm wondering what he said to you when he asked  
21 you to take the position as Secretary of Education and the Board  
22 of Education? What was his direction to you to do with public  
23 schools in California?

24 MR. BERSIN: He was very direct. And I take your  
25 criticism, Senator. I've gone from being a lawyer to being an  
26 educator, and now I'm talking in education-ese that even my  
27 friends can't understand.

28 But it was very direct. But this is not subject



1 to simple propositions. But the Governor was very direct in  
2 saying three things. One is, we want to create a system in  
3 which we build the capacity for students to meet the high  
4 standards that we've set in each of our subject matters. All  
5 students need to meet the same standards. We need to provide  
6 the support to some students and to our teachers to help our  
7 students meet that.

8 We need to create a system that is capable of  
9 responding to different needs around the state. We need to be  
10 able to provide the skills -- the support for teachers to gain  
11 the skill and knowledge they need, professional development.

12 We need to recruit teachers into the most  
13 difficult schools. We need to see that we have an equality of  
14 distribution of good teaching in all of our schools,  
15 particularly in the schools that need the best teaching.

16 And the last thing that he said is that he wants  
17 to bring up the floor and raise the ceiling on student  
18 achievement. That we need not take from the students the high  
19 level student achievement in order to raise the lowest among  
20 us.

21 I wish, Senator, that that was as easily  
22 implemented as it is to state the proposition.

23 But I understand what the need is, and I think I  
24 understand your point.

25 SENATOR ASHBURN: My point would be, it took you  
26 only but two minutes to describe the four goals that the  
27 Governor laid out. They seem fairly straight forward to me, and  
28 they all have to do with teaching our kids what they need to



1 learn so that they can succeed.

2 Have you established for yourself a timeline, a  
3 set of goals, that you can measure your personal performance and  
4 the performance of this -- and I agree with you -- incoherent  
5 structure of governance for education in California?

6 MR. BERSIN: I might also, just in the interest  
7 of if you'd like me to restate the way the Governor might talk  
8 about this English language development --

9 SENATOR ASHBURN: No, I don't want you to give  
10 explanation. I just want a yes or no.

11 Have you established the goals --

12 MR. BERSIN: Yes.

13 SENATOR ASHBURN: Have you established the goals  
14 for yourself?

15 MR. BERSIN: Yes, we have.

16 SENATOR ASHBURN: Have you established a timeline  
17 for yourself to try to push toward those goals?

18 You will either have succeeded or you will have  
19 fallen short.

20 MR. BERSIN: Yes.

21 In terms of the Governor's legislative program  
22 and the mission that he has provided to me, yes. I have the  
23 list of objectives that we need to accomplish in terms of  
24 improving public education, yes.

25 SENATOR ASHBURN: I think it's so critical that  
26 we focus so that the public follows with understanding what it  
27 is we're even trying to achieve.

28 Thanks.

1 CHAIRMAN PERATA: Anyone here in support of the  
2 nominee, come forward.

3 In deference to the number of people, we'd like  
4 you to try not to repetitive and be brief in all circumstances.

5 MR. LONG: Thank you very much.

6 My name is Dave Long. I am the Superintendent of  
7 Riverside, County of. And I also come before you today as the  
8 President of the California County Superintendents Educational  
9 Service Association, CCSESA.

10 I just want to say a few things about this  
11 gentleman on my right. First of all, and some of them have been  
12 said so I'm going to jump through some of them.

13 We know that Alan Bersin has been a  
14 superintendent of schools. From the standpoint of educators in  
15 the State of California, that is very critical because this is a  
16 person that's been in the field, and he understands what is  
17 going on and understands the children.

18 He's also been on the front line and front line  
19 experience, which also is very critical and gets to your point,  
20 Senator. I agree with you 100 percent. We have to clearly  
21 focus, and we have to clearly have a timeline to accomplish that  
22 for our children. If not, we should get off the train so that  
23 other people can get there.

24 I was thinking about this as I came up on the  
25 plane this morning, about this gentleman on my right, just a few  
26 things about him, and how the superintendents in the State of  
27 California feel about him.

28 He is trusted; he is respected; he is highly

1 visible. He is everywhere, and we appreciate that. Because he  
2 is everywhere, we have the opportunity to interact with him, and  
3 then comes another very important inherent quality about this  
4 man, he listens. After he listens, if he does not agree, he  
5 will tell you why, straight forward. We appreciate that. But  
6 even if we disagree, he also will back off and we can discuss it  
7 so that we can still come down to some kind of an agreement,  
8 again, for the good of the children of California.

9 Just a couple other things about him, and it's  
10 already been said. He has a state network. He has a federal  
11 network. That bodes well for the children of California.

12 It's also been mentioned, and Gavin Payne said it  
13 first when he was up here, and that is that this man and Jack  
14 O'Connell have formed a positive collaborative effort that we  
15 have not seen in this state for decades. And if we're going to  
16 meet those objectives, and meet that timeline, we need that kind  
17 of collaboration between these offices and with the State Board  
18 of Education. And I think with this gentleman and Jack walking  
19 through the door together, we're going to achieve that.

20 And lastly, this has also been said, but he has a  
21 focus, and he is passionate about what is best for the children  
22 of California. And I will tell you as I sit here today, the  
23 superintendents of this great state are as passionate about this  
24 gentleman on my right what he does for our children as a  
25 representative on the State Board of Education.

26 Thank you for your time.

27 CHAIRMAN PERATA: Thank you for being here.

28 MR. THOMAS: Senator Perata and Members, my name

1 is Glen Thomas. I'm Executive Director of the California County  
2 Superintendents Association.

3 In my mind, there are four personal  
4 characteristics to be on the State Board. One is, person of  
5 integrity, thoughtful, accessible, and listens. And Mr. Bersin  
6 has those four characteristics.

7 Secondly, in my mind, and I know Mr. Bersin  
8 agrees with this, to improve public education, keep it on the  
9 path that we're on -- I'm a product of public education, life-  
10 long educator, Mr. Perata, a former teacher as well -- you need  
11 to have high quality instruction on the front end, and clear  
12 results, analysis of how the students are doing, are performing,  
13 on the back end. Otherwise, it's just talk about accountability  
14 and how we're doing.

15 In 30 years we've done a lot of good things in  
16 this state. We haven't done everything we have set out to do.  
17 We have not accomplished it. Mr. Bersin understands those  
18 premises and those values.

19 The County Superintendents of this state support  
20 Mr. Bersin for confirmation to the State Board.

21 Thank you.

22 CHAIRMAN PERATA: Thank you.

23 SENATOR BATTIN: Mr. Chair, to the witnesses that  
24 are lined up all in a row there, I would really appreciate it if  
25 you could keep it brief, along the lines with Senator Ashburn's  
26 comments about expanding upon simple concepts, if you support  
27 Mr. Bersin.

28 I have to go back to an Elections and



1 Constitutional Amendments Committee, and then I still have yet  
2 to go to a GO Committee. 'Tis the season to be stacked up.

3 We need to truncate this as much as possible.  
4 Thank you.

5 MR. PLOTKIN: Thank you, Mr. Chairman and Members  
6 of the Committee.

7 I'm Scott Plotkin, the Executive Director of the  
8 California School Boards Association. And it is my lot in life  
9 to be the speaker after an admonition to be brief.

10 I'd just like to tell the Committee that we are  
11 supportive of Mr. Bersin's confirmation to the State Board. I  
12 first met him when I was working for Dee Dee Alpert as the Chief  
13 Consultant to the Senate Education Committee, and he was the  
14 brand-new superintendent.

15 I found him then, as I found him now, to have a  
16 high level of integrity, honesty, and support for the public  
17 schools. But most importantly, he favors focus and  
18 sustainability in the school reform effort, not withstanding the  
19 painful explanation about what happened on Monday, Senator  
20 Ashburn, because it was a complex issue. The fact of the matter  
21 is, is that we have supported his efforts in this regard, and we  
22 hope that he will be confirmed.

23 Thank you.

24 MS. SKELLY GRIFFITH: Mr. Chair and Members,  
25 Sherry Skelly Griffith with the Association of California School  
26 Administrators.

27 Our 16,000 members strongly support the  
28 confirmation of Alan Bersin. He has consistently provided a

1 reasoned voice at the State Board meetings. I have the  
2 privilege of working with him every other month on those  
3 agendas, which are phone book size. And he is a consensus  
4 builder. He has opened his door to stakeholders, and we welcome  
5 that opportunity.

6 He's very independent as a State Board member,  
7 which we've also welcomed on the State Board. He's intelligent;  
8 he's thoughtful. He's helped us with some very complex issues  
9 before the federal government.

10 And finally, we had a wonderful relationship with  
11 Mr. Bersin when he was Chair of the Commission on Teacher  
12 Credentialing. He strongly believes in the recruitment,  
13 retention of school administrators and teachers in this state of  
14 quality.

15 We highly recommend his confirmation.

16 CHAIRMAN PERATA: Thank you.

17 MR. SWOFFORD: Good afternoon, Senator Perata,  
18 Members of the Senate Rules Committee.

19 I'm Sam Swofford, Executive Director of the  
20 California Commission on Teacher Credentialing for the past ten  
21 years.

22 I've known Secretary Bersin for a number of  
23 years. He has led the Commission during 2000 and 2004, he  
24 served as a Commissioner. During that tenure, he served as the  
25 Chair of the Commission, from 2001 to 2002.

26 He is very thoughtful. He uses an inquiry  
27 method, and he supports stakeholders. And I fully endorse  
28 Secretary Bersin for the appointment to the State Board of

1 Education.

2 Thank you.

3 CHAIRMAN PERATA: Thank you.

4 SENATOR BATTIN: Okay, I won't belabor this  
5 point, but if everybody takes two minutes, I'm afraid I will be  
6 leaving before we cast a vote for you and your other colleagues  
7 as well.

8 So, I would ask everybody just to be brief and  
9 go. We still haven't listened to people who don't want you in  
10 the position, and we have to do that as well. So, I please ask  
11 you if you could be brief, or you'll lose my vote because I'll  
12 have to go.

13 CHAIRMAN PERATA: People who have come a far  
14 distance, like Riverside, yes. But those of you who are, with  
15 all due respect, on the clock, you can just give name, name,  
16 rank and serial number.

17 Are you on the clock?

18 MR. RIVEROLL: Good afternoon. I come from San  
19 Diego. Vincent Riveroll.

20 CHAIRMAN PERATA: Knock yourself out.

21 MR. RIVEROLL: I will be brief.

22 First, I want to say I'm truly honored to be here  
23 to speak about --

24 CHAIRMAN PERATA: Your name?

25 MR. RIVEROLL: Vincent Riveroll -- to speak about  
26 Alan Bersin.

27 I'm a school principal at one of the lowest  
28 performing schools in the state of California. So, Senator,

1 when you were talking about directness and candor, and getting  
2 to the point, I can tell you it's the toughest work in the  
3 state, to lead a low performing school for our children.

4 I apologize if I look tired, but I must say that  
5 I've heard over and over again in the years, put students first;  
6 put students first; children come first.

7 I think that's probably the easiest statement to  
8 say.

9 What's different about Alan D. Bersin is that he  
10 means it, because with that statement comes great  
11 responsibility, and dedication, and commitment.

12 When I first met Alan Bersin, this is the image  
13 that stays in my mind, because every day when he spoke, it was  
14 about keeping kids first in the decisions that we make, no  
15 matter how hard those decisions are, and how hard the work would  
16 be.

17 I can't imagine the work without Mr. Bersin.  
18 When he said -- when he said we need our best people at low  
19 performing schools, I think he left something out. You just  
20 don't leave them at low performing schools. You support them.  
21 And you encourage them, and you give them feedback, and you  
22 coach them, and you mentor them. And Mr. Bersin has done  
23 exactly that over the seven years that I've known him.

24 And today I'm proud to say that one of the  
25 greatest grassroots measures in the State of California was when  
26 a failing school for over 30 years became a charter school with  
27 the inspiration of Alan Bersin, and parents and community and  
28 students. And I have learned from his lead that you always put



1 students first, even about the sacrifices that you will make.

2 So, I highly am honored to say thank you publicly  
3 for your inspiration to San Diego, and I support his  
4 confirmation to the State Board.

5 CHAIRMAN PERATA: Thank you for being here.

6 MR. GARCIA: Good afternoon, ladies and  
7 gentlemen. Thank you so much for this opportunity.

8 My name is Narciso Garcia. I'm a vice principal  
9 at Chollas-Mead in San Diego.

10 A lot of wonderful things have already been said  
11 about Mr. Bersin. And I have prepared a speech, which I'm not  
12 going to read to you today because it's going to take more than  
13 two minutes, but I will point out to you a couple of things.

14 CHAIRMAN PERATA: You may give that to the  
15 Sergeant.

16 MR. GARCIA: Okay. I have copies for all of you.

17 The first thing I want to tell you is that I've  
18 been in this country for about 10 years. And when I got here  
19 about 10 years ago, I went and looked at some classrooms. I was  
20 looking for a job as a teacher. And when I looked in the  
21 classrooms, I just couldn't believe what I saw. I saw children  
22 that were playing with manipulatives on the rug. I saw children  
23 that were playing with books in the back of the classroom. I  
24 saw classrooms that had no libraries in them.

25 It was after Mr. Bersin came that every classroom  
26 got a library for the students. Children after Mr. Bersin had  
27 the opportunity to read books that were at their level and that  
28 were interesting to them.

1           Mr. Bersin focused heavily on the education, and  
2 I mean the education of teachers and administrators, because we  
3 were in the dark. It was because of him that we had the  
4 opportunity to learn from one another, become reflective, and do  
5 what was best for the kids.

6           I want to share something personal about  
7 Mr. Bersin, too. In 2003, I was diagnosed with leukemia. I  
8 thought that I was going to die when I was in the hospital, and  
9 I would want for people to come and talk to me, and lift me up.  
10 And sometimes I would also want people to feel sorry for me.

11           One day when Mr. Bersin came and sat next to me,  
12 he gave me this book. It's called Simple Justice. And he wrote  
13 some very powerful words on this book for me, and I would like  
14 to share them with you. He wrote, "With admiration and  
15 affection and confidence in our victory over sickness and  
16 ignorance, I stand with you always."

17           I'm here to say today that I stand with  
18 Mr. Bersin always, and I will stand with him forever, not  
19 because of what he's done for me at a personal level, but  
20 because he is a man who focuses on children first. And he  
21 changed a dark environment that children were experiencing in  
22 San Diego.

23           And I'm here to also thank him publicly for  
24 this. And I pray that God will bless him always.

25           CHAIRMAN PERATA: Thank you.

26           MS. LADD: Good afternoon, ladies and gentlemen,  
27 and Members of the Assembly. My name is Patricia Ladd.

28           CHAIRMAN PERATA [Whispering]: Senate.

1 MS. LADD: I'm sorry, Senate.

2 My name is Patty Ladd, and I flew up from San  
3 Diego, so that's why I made that mistake.

4 [Laughter.]

5 CHAIRMAN PERATA: Different time, different  
6 culture, yes.

7 MS. LADD: And I'm going to make it really brief.  
8 I honor the concerns here.

9 I do have a wonderful speech that I will present  
10 to Alan later.

11 I was a classroom teacher, and I was very content  
12 to be a classroom teacher. And then Mr. Bersin came to San  
13 Diego, and I watched and listened to what he stood for. And I  
14 realized that I needed to step out of my comfort zone and impact  
15 more than just the students in my classroom.

16 So, an innovative program under Mr. Bersin's  
17 watch through the University of San Diego and the district  
18 trained people like me, that were on the track for, you know,  
19 becoming a principal. A wonderful opportunity to mentor.

20 And then what happened was, I had spent my entire  
21 career in the more affluent part of San Diego, very naively  
22 assuming that education was pretty much equitable. Was I wrong.  
23 And I'm now proud to say that I am a principal of the second  
24 lowest performing school in San Diego, a middle school. And we  
25 are -- the laughter was from the gentleman who was the principal  
26 of the first.

27 [Laughter.]

28 MS. LADD: He was my mentor, and we are -- we've

1 created climates of learning out of climates of chaos. And it  
2 was because of this gentleman. I never would have taken on that  
3 hard work. It is the hardest work of my life, but I've never  
4 been happier. This is a man who can inspire.

5 So, I'm pleased and honored to be speaking on his  
6 behalf, and I look forward to his appointment.

7 Thank you.

8 CHAIRMAN PERATA: You've done better than your  
9 mentor. Congratulations.

10 [Laughter.]

11 CHAIRMAN PERATA: Next.

12 MR. LUFFORD: Good afternoon, ladies and  
13 gentlemen, and distinguish Members of this Committee,  
14 Mr. Chairman.

15 My name is Peter Lufford. I'm from San Diego,  
16 and I'm a taxpayer.

17 CHAIRMAN PERATA: You're not going to read two  
18 pages.

19 [Laughter.]

20 MR. LUFFORD: The purpose that I'm here for today  
21 is to help cause the affirmation of Alan D. Bersin on the State  
22 Board of Education.

23 I, too, have a long speech, but I'll defer to  
24 Mr. Battin, and I'll make it short.

25 I've known Alan personally for sometime, but more  
26 so through vicariously through my wife, who has been a teacher  
27 and an administrator for 23 years in San Diego. And I've seen  
28 the improvements that he's made in the leadership, and the great



1       qualities. And at all times he's always had children at the  
2       heart of everything that he's done.

3               Now I'll really cut my speech short and tell you  
4       that in 1953, I was a former Marine fighter pilot. I graduated  
5       from flight school then, and I happened to have been assigned  
6       the call sign Maverick. I received that name because I was  
7       inspired and wanted to make a difference. I took some chances,  
8       as Maverick does, and became a leader.

9               Just as I was inspired by people who had great  
10       vision and the will to do the right thing, Alan Bersin has  
11       inspired those in education to make a difference and to do the  
12       right thing.

13              So, if you'll bear with me for a second, ladies  
14       and gentlemen.

15              CHAIRMAN PERATA: You're a lot better looking  
16       than the guy who played you in the movie.

17                               [Laughter.]

18              MR. LUFFORD: It is with great pleasure and pride  
19       and passion that I pass this helmet, my flight helmet, that says  
20       "Maverick, 1952-1967, Captain, United States Marine Corps," to  
21       the real Maverick, the top gun in education, Alan D. Bersin.

22              I'm going to leave the oxygen mask on because  
23       you'll probably need that.

24              CHAIRMAN PERATA: In fond memory of Dukakis,  
25       don't put it on.

26                               [Laughter.]

27              CHAIRMAN PERATA: Anyone further? Anyone here in  
28       opposition?

1           MR. SOOKPRASERT: Mr. Chairman and Members, Jai  
2 Sookprasert with the California School Employees Association.

3           CSEA is in opposition to the appointment of  
4 Mr. Bersin to the State Board and asks that you vote no on his  
5 confirmation. I have been directed to oppose his appointment by  
6 our Board of Directors for three basic reasons.

7           The first is that Mr. Bersin's appointment is --  
8 continues a pattern of appointments by the Governor to the top  
9 level executives -- of his top level executives to positions --  
10 to public positions on major boards. These positions are  
11 becoming more of an extension of his office. Mr. Bersin already  
12 carries substantial voice and influence as the Secretary of  
13 Education. We feel that it's inappropriate and unnecessary for  
14 him to also fill a seat on the State Board.

15           Second, CSEA has always been a strong advocate  
16 for more diversity on the State Board, and we think that this is  
17 a lost opportunity for you to increase the diversity on the  
18 Board.

19           Third, and probably the most intensive emotional  
20 issue for members in San Diego, Mr. Bersin's record in San Diego  
21 was a disaster for our members, for the classified school  
22 employees there. One of his first acts was to fire almost 1,000  
23 instructional aides. These are workers who predominantly are  
24 women and minorities who work to serve low-income students in  
25 low performing schools. These actions were devastating to many  
26 workers, many of whom had been volunteer parents, and who had  
27 worked their way to become workers within those schools.

28           Morale in San Diego was at an all-time low during

1 his tenure. He had received a No Confidence vote from the  
2 teachers, from 93 percent of the teachers in 2001, and he was  
3 sued for illegally terminating school principals, and he also  
4 was forced to resign from the board by the school board and  
5 received a substantial amount of funds from the cash strapped  
6 school district.

7 The San Diego School Board recently conducted an  
8 internal audit of his expenditure of some funds related to the  
9 joint fund of the district and the San Diego Foundation, and  
10 this report has called into question many of those expenditures  
11 more meals, drinks, and attendance to an inauguration.

12 As Secretary of Education, Mr. Bersin carries out  
13 the policy of the Governor. We understand that.

14 As a member of the State Board, he has the power  
15 to vote on Education Code waivers, personnel matters, and  
16 numerous policy decisions. A Governor's policy proposal  
17 regarding teacher dismissal in Prop. 74, and education budget  
18 cuts in Prop. 76, were proven to be out of step with the public  
19 in last year's Special Election. Mr. Bersin was an advocate  
20 for these policies. These positions are justified and expected  
21 of the Secretary of Education. They are, however, out of step  
22 and unacceptable as a member of the State Board.

23 For these reasons, the California School  
24 Employees Association opposes Mr. Bersin's appointment to the  
25 State Board, and we respectfully urge your no vote on his  
26 confirmation.

27 Thank you.

28 CHAIRMAN PERATA: Thank you.

1 MS. SASSMAN: Good afternoon. I'm Lysa Sassman.  
2 I'm a first grade teacher in Auburn, and I'm here representing  
3 the California Teachers Association.

4 Barbara Kerr sends her regards, and she has a  
5 letter that you all should have in your packet to let you know  
6 her feelings on this matter.

7 CTA strongly opposes the confirmation of Alan  
8 Bersin to the State Board of Education for two reasons.

9 During his reign in San Diego, his leadership  
10 style was extremely divisive. It divided the community; it hurt  
11 teacher morale, and it did not significantly improve student  
12 achievement.

13 He supported the failed initiatives of the past  
14 election, which were very costly and unpopular with the voters  
15 in California.

16 He will not serve this state well on the Board of  
17 Education. And as the acting State Secretary of Education, the  
18 potential conflict between the two offices will prevent the  
19 duties of both offices from being carried out.

20 Two offices are said to be incompatible when the  
21 holder cannot in every instance discharge the duties of each.  
22 Incompatibility arises, therefore, from the nature of the duties  
23 of the offices when there is an inconsistency in the functions  
24 of the two, where the functions of the two are inherently  
25 inconsistent or repugnant, or where antagonism would result in  
26 them by one person to discharge the duties of both offices, or  
27 where the nature of the two offices are such as to render it  
28 improper from considerations of public policy for one person to



1 retain both.

2 An example of this potential conflict between the  
3 offices of the Secretary of Education and member of the State  
4 Board of Education would be when the Secretary of Education  
5 wishes to talk to other members of the State Board of Education  
6 about the Governor's policies.

7 In conclusion, having Mr. Bersin hold both  
8 offices simultaneously not only has the appearance of  
9 impropriety, but performing dual roles would inhibit the proper  
10 functioning and faithful performance of these roles. For these  
11 reasons we ask for your no vote on the confirmation of Alan  
12 Bersin to the State Board of Education.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 MS. VALLEJO-OHLIN: My name is Ramona  
16 Vallejo-Ohlin, and I am -- my grandchildren are third generation  
17 San Diego Unified.

18 I retired from San Diego Unified in 2003, after  
19 teaching 32 years in the district. I actually taught 25 of the  
20 last 32 years at a barrio school, Sherman Elementary. We had 75  
21 or 85 percent of the children were English learners, 100  
22 percent Title One.

23 Mr. Bersin, a noneducator superintendent,  
24 appointed Anthony Alvarado as Chancellor of Instruction, who in  
25 turn created an Institute for Learning for the blueprint for  
26 student success. All his administrators and curriculum leaders  
27 were trained in the so-called balanced literacy curriculum that  
28 spent millions on consultants and was diametrically opposed to

1 state and federal standards. It also ignored what we knew as  
2 teachers on how children learn to read, that was with systematic  
3 phonics. It also ignored how to catch older students up using  
4 systematic phonics and getting them up to grade level.

5 During the entire seven years of Mr. Bersin's  
6 superintendency, state textbooks in reading in all grades were  
7 not used or encouraged to be used in classrooms. Teachers had  
8 to write their own curriculum for all levels of reading in  
9 classes. For most of the seven years, a nonapproved math series  
10 was used in grades K-6.

11 In 2000, parents and some teachers, including  
12 myself, filed a uniform complaint with the State Department of  
13 Education and eventually with the U.S. Department of Education.  
14 The complaint was that the San Diego School District had  
15 violated state and federal law by illegally misallocating \$62  
16 million that was intended to help educationally disadvantaged  
17 youth. As a result, San Diego School District changed its  
18 policies.

19 Under Mr. Bersin, principals were trained to  
20 target at least two teachers with the intention of firing or  
21 forcing early retirement. What a tragic result we had of this,  
22 with senior teachers who were teaching at Title One schools  
23 either transferring schools or retiring young, retiring early.  
24 Young, inexperienced teachers who could be trained in the  
25 balanced literacy approach were assigned to these schools. The  
26 harassment of teachers was so wide spread throughout the  
27 district that a climate of fear bound teachers to confirm what  
28 the institute taught.

1                   It has been a travesty that Mr. Bersin has been  
2 appointed to Secretary of Education, much less this appointment.  
3 But we have lived through the Bersin years, and we do speak out  
4 to our Legislators, elected Legislators, to deny the appointment  
5 of Mr. Bersin to the State Board of Education.

6                   Thank you.

7                   CHAIRMAN PERATA: Thank you.

8                   Next speaker, please.

9                   MR. MacCARTHY: Good afternoon, Chairman Perata,  
10 Members of the Committee. My name is Mike MacCarthy. I'm from  
11 San Diego. I'm President of an organization called Voters for  
12 Truth in Education.

13                   I believe that all of you have in your packet a  
14 copy of the letter, and with all of the documentation and  
15 schedules that I wrote you earlier in the week. So, I'm just  
16 going to take a minute to hit the highlights of these.

17                   I listed four reasons why I believe Mr. Bersin  
18 should not be confirmed. The first one is that his policies,  
19 this is about Mr. Bersin's policies, not about Mr. Bersin the  
20 individual, his policies were a documented failure and worked  
21 especially to the detriment of disadvantaged children, parents  
22 and communities. And I've documented that, where an elementary  
23 school wrote a letter stating what they believed, and that they  
24 never got a response from the Bersin administration.

25                   I also very included a schedule that shows that  
26 the Latino Coalition of San Diego County filed a voluminous  
27 report with Mr. Bersin's administration, saying how they had  
28 lost faith in his so-called blueprint for student success, and

1 that they were withdrawing their support, and that they had a  
2 list of points that they wanted to answered, and those answers  
3 were never answered.

4 Second point was, Mr. Bersin has a record of  
5 noncollaboration with all education stakeholders, especially  
6 teachers, administrators and parents. And that's -- I think  
7 that's a point that's very important because in this capacity at  
8 this level, the ability to collaborate is essential in our  
9 belief system.

10 And that when you have a superintendent of  
11 schools rousting parents from their beds at 5:00 o'clock in the  
12 morning because their children are truants, I think that's poor  
13 collaboration.

14 When you have the state suing San Diego City  
15 Schools because San Diego City Schools has failed the special  
16 education children, that does not show me that that is a sign of  
17 collaboration and meeting the needs of the children.

18 When Mr. Bersin and his administration have  
19 organized classes and videos on how to ignore state standards,  
20 and impose whole language reading strategies that totally go  
21 against the state standards of reading, then something's not  
22 right.

23 And I could on and on, but I think if you look at  
24 the packet, you'll see what I'm talking about.

25 The other thing, that Mr. Bersin has a record of  
26 nontransparency in governance. That is all well documented in  
27 my report as well, where so many things were secret, and so many  
28 things happened that we didn't know about, that finally and



1 eventually some of them are coming out now.

2 Mr. Bersin has a record of ignoring. We've got a  
3 full turnout where the public meetings are held, where the place  
4 is completely packed, and everybody there is indicating their  
5 very passionate disagreement with policies, and they get their  
6 chance to speak, they get their minute, but then, after it's all  
7 over, it's ignored. So that to me is all about why Mr. Bersin's  
8 policies were a failure in San Diego.

9 And finally I'd like to end on one short note  
10 that came from a New York City newspaper about what's really  
11 going on here in San Diego, and what's really going on in the  
12 State of California concerning Mr. Bersin.

13 This is dated September 9th last year. Eli Broad  
14 is one of those folks who thinks that because he knew how to get  
15 rich, he knows how to fix schools. He thinks the  
16 superintendents and principals needn't be educators. His model  
17 is Alan Bersin, a former Democratic fund -- federal prosecutor  
18 who, until recently, was Superintendent of Schools in San Diego.  
19 After years of flat scores, I'm not saying this, he is, the  
20 deflated teacher morale, and soaring budgets, the school board  
21 kicked him out.

22 Typically, Mr. Bersin has landed on his feet.  
23 Governor Schwarzenegger has recently named him California's  
24 Education Commissioner. And here's the part that I want  
25 everybody to think about, please, before you make your vote on  
26 Mr. Bersin's candidacy. The failed Bersin/San Diego model is  
27 what Mr. Broad proffered to New York by dangling a few bucks in  
28 front of our education officials. Our educrats, his word, were

1 quick to grab the money, leveraging 15 billion in taxpayer  
2 investment in education for the 2.3 million grant.

3 So pleased is Mr. Broad that he will soon give  
4 our school officials a prize, another half-million dollars.

5 So, this education reporter in New York writes as  
6 his last thought, "Beware of billionaires bearing gifts."

7 Voters for Truth in Education believes that one  
8 of the gifts to California from Eli Broad is Alan Bersin, and we  
9 strongly urge your vote against him.

10 Thank you.

11 SENATOR ASHBURN: Question.

12 If you don't mind, sir, I'd like to ask you a  
13 couple questions.

14 MR. MacCARTHY: Not at all.

15 SENATOR ASHBURN: You're representing, I take it,  
16 yourself and an organization?

17 MR. MacCARTHY: That's correct.

18 SENATOR ASHBURN: Voters for Truth in Education.

19 MR. MacCARTHY: Yes, sir.

20 SENATOR ASHBURN: How many members are there in  
21 your organization?

22 MR. MacCARTHY: Less than a thousand.

23 SENATOR ASHBURN: Less than a thousand. So,  
24 that's like one to a thousand. Is it like a hundred?

25 MR. MacCARTHY: Several hundred. I couldn't tell  
26 you right this minute.

27 SENATOR ASHBURN: You've made some very serious  
28 accusations. I don't know if they're true or not. I have no

1 way to judge that.

2 I'm wondering, though, first, who the  
3 organization is? Who the members are? And then how you  
4 ascertained, for example, that Mr. Bersin personally roused  
5 parents at 5:00 a.m. How would you know that?

6 MR. MacCARTHY: Well, first of all, he didn't  
7 personally do it. He was behind it happening, and it was in the  
8 paper. It was in the newspaper. He was in charge of making  
9 that happen with the San Diego City Police. That happened.  
10 It's public record.

11 All of my -- all of the information that you have  
12 in your packet from me --

13 SENATOR ASHBURN: Let me ask Mr. Bersin then.  
14 Did you as Superintendent in San Diego direct  
15 your personnel or anyone else to roust parents at 5:00 a.m.?

16 MR. BERSIN: No, Senator.

17 SENATOR ASHBURN: Did it occur?

18 MR. BERSIN: No, Senator.

19 SENATOR ASHBURN: Are there affidavits that back  
20 up your accusation, sir?

21 MR. MacCARTHY: I'll be happy to send you by fax  
22 the newspaper accounts.

23 SENATOR ASHBURN: So, what you have is a  
24 newspaper account.

25 MR. MacCARTHY: Yes.

26 SENATOR ASHBURN: We don't have affidavits from  
27 parents saying this happened?

28 MR. MacCARTHY: We have quotes from the parents.

1 We have pictures.

2 SENATOR ASHBURN: Okay. Thank you, sir.

3 CHAIRMAN PERATA: Thank you, Mr. MacCarthy.

4 MR. MacCARTHY: Thank you very much.

5 CHAIRMAN PERATA: Anyone further?

6 I would like to provide you with a brief  
7 opportunity, if you'd care to close.

8 MR. BERSIN: With regard to the concern regarding  
9 a conflict between the jobs and the incompatibility, I've been  
10 assured and I've satisfied myself there is no incompatibility,  
11 that being the Secretary and a member of the Board, as I  
12 indicated, can provide an opportunity for building the kinds of  
13 relationships that will produce consensus and help find middle  
14 ground.

15 With regard to the complaints supposedly filed  
16 against San Diego Unified by the state, by the federal  
17 government, there were two. One was considered fully by the  
18 state and was -- it was a -- it was found not to be warranted in  
19 respects.

20 The second was a federal lawsuit that was filed  
21 in San Diego and dismissed by the Honorable Irma Gonzales for  
22 failure to state a claim.

23 With regard to the Superintendent's Fund, that  
24 was a matter of issue, that has been turned over because of a  
25 Public Records Request that I filed to the Committee staff and  
26 reviewed at great length. And I think the conclusion of the  
27 Committee staff is the same thing that led the lawyers who did  
28 the review to recommend to the Board that that not be sent to



1 the Attorney General, or the FPPC, or the IRS, and the Board  
2 ignored the advice of its counsel. But the record is -- the  
3 report is before the Committee.

4 With respect to the perception, this was a change  
5 process. The academic achievement in San Diego had been  
6 stagnant for a decade, and the achievement gap had been growing  
7 at an alarming rate. Contrary to the assertion that performance  
8 was flat, the CDE, the data shows both a growth across the  
9 board. This year from 2001, 31 percent of all the students --  
10 in 2001, 31 percent of all the students were proficient in  
11 English language arts in San Diego. In 2005, that's gone from  
12 31 to 42 percent of the students in San Diego.

13 With regard to mathematics, 25 percent of the  
14 students were proficient in 2002, when the first test --  
15 examination was given. In 2004, that's 37 percent. The trend  
16 is up. And even more importantly, when you look at the academic  
17 achievement gap, it's been narrowed in San Diego, one of the few  
18 urban districts in which that's been the case.

19 With regard to the firing of instructional aides,  
20 the most difficult decision that was taken during my term in San  
21 Diego, yes, there was a reallocation of resources: \$32 million  
22 from institutional aides to the investment in teacher learning  
23 and classroom libraries.

24 I will leave with the clerk -- but this was not  
25 done in a way that was insensitive. For each one of the  
26 employees, and this is documented in a letter I'll leave with  
27 the Sergeant for each you, directed to then-Assembly Member  
28 Ducheny, it was documented that I and our Human Resources people

1 met with the CSEA Union leadership, went to the AFL-CIO labor  
2 leader in San Diego, Jerry Butcuwitz. Ron Duva, then the head  
3 of the statewide CSEA, came down, and we specifically offered,  
4 because it was a robust economy in 2000, in the year 2000, we  
5 offered a full-time job to every single one of the persons we  
6 displaced, either in the school district or through working with  
7 the county and the statewide CSEA in the county.

8 This was a very difficult decision, but one that  
9 reflected the research that said we needed to use these  
10 resources more productively, that instructional aides were not  
11 adding to the teaching and learning in the classroom.

12 The most important thing, and the thing on which  
13 the legacy on which this record rests, is improved student  
14 achievement. That's why I was asked to take the job. That's  
15 why I took the job, and the record will speak for itself in  
16 terms of improved student achievement.

17 CHAIRMAN PERATA: Thank you, sir.

18 Anything further from the Members?

19 SENATOR BATTIN: Move.

20 CHAIRMAN PERATA: We have a motion to approve.  
21 Please call the roll.

22 SECRETARY WEBB: Ashburn.

23 SENATOR ASHBURN: Aye.

24 SECRETARY WEBB: Ashburn Aye. Bowen. Cedillo.

25 SENATOR CEDILLO: Aye.

26 SECRETARY WEBB: Cedillo Aye. Battin.

27 SENATOR BATTIN: Aye.

28 SECRETARY WEBB: Battin Aye. Perata.

1 CHAIRMAN PERATA: Aye.

2 SECRETARY WEBB: Perata Aye. Four to zero.

3 CHAIRMAN PERATA: Four to zero, congratulations.

4 MR. BERSIN: Thank you, thank you.

5 CHAIRMAN PERATA: We're going to take a  
6 ten-minute break.

7 [Thereupon a brief recess  
8 was taken.]

9 CHAIRMAN PERATA: We are reconvening.

10 We are going to continue as a subcommittee until  
11 Members who are in other committees are coming back.

12 I'd like to ask Ms. Chan and Mr. Noonan to come  
13 forward, please. You can come at the same time.

14 How are you?

15 DR. CHAN: Fine, thank you.

16 Good afternoon, Senator Perata and Senator  
17 Battin. Only two of you so far. Okay, that's fine. Let's go  
18 with this.

19 CHAIRMAN PERATA: He kept threatening to leave,  
20 but he's still here.

21 DR. CHAN: My name is Yvonne Chan, and I'm very  
22 proud and humbled to be in front of you, this little school  
23 principal of a very little school in the barrio of Los Angeles,  
24 hope to be today in front of you to be worthy of your support.

25 Many, many years ago, I was only seventeen with a  
26 hundred dollars in my pocket. And "It Was a Very Good Year."  
27 Remember that song?

28 And thanks to the generosity of the American

1 people, and the wonderful policies of our late President  
2 Kennedy, I was able to come from -- on a "Slow Boat," all the  
3 way from China across this big ocean, heading for this Land of  
4 the Free and the Brave in search for the Gold Mountain.

5 You know that we call California Gold Mountain  
6 even today. Many of us still want to come and dig gold. Did I  
7 find gold? Absolutely. I found compassion for kids, the bonus  
8 to be different, as well as the enthusiasm and the energy to  
9 bring people along to really reach some impossible dreams.

10 And I have been pretty lucky, you know, Senator?  
11 I've been very lucky. I have had great, great mentors, and they  
12 have taught me the basic concept which can be spelled out in the  
13 word "reach." I'm a teacher, so I can use literacy.

14 Reach. How do you spell it? R-e-

15 CHAIRMAN PERATA: R-e-a-c-h.

16 DR. CHAN: -- a-c-h, thank you very much.

17 Okay. So, I use that to apply to everything I  
18 do, as well as I will use that to apply to my role in the State  
19 Board.

20 So, "R" for me -- they taught me, "Say 'R',  
21 Yvonne" -- stands for resilience, confidence to tackle  
22 problems.

23 Fresno, California in 1963, the farmworkers who  
24 took good care of us, they used to call me "Chinita." Some of  
25 you may not understand the Spanish, meaning curly hair. Nothing  
26 to do with being Chinese. Okay? But they somehow, you know,  
27 thinking I will understand Chinita better than anything else, so  
28 they called me Chinita.



1                   And they used to say, "Hey, Chinita, Chinita.  
2   Tenemos mucho que hacer. Aprenda la lengua. Si, podemos." So,  
3   I did. I learned Spanish before even English.

4                   So with that, it is this "Yes, I can! Yes, I  
5   can! I know I can," that I share daily with my students, living  
6   in poverty in Pacoima with my parents to make the community  
7   strong to be self-sufficient.

8                   Now, so what do our parents in Pacoima can do?  
9   I'll tell you what they have done. These parents, so many of  
10   them not even educated -- I have 100 percent free or reduced  
11   lunch, 1800 kids. 1200 of my kids are English learners in the  
12   empowerment zone. What they have done, these parents turn the  
13   Family Center into a business co-op. They run a little Kinko.  
14   They sell uniform. They set up an exchange service bank, but a  
15   bank with no money. They just roll up their sleeves and say,  
16   "What you can do and what I do. Okay? Let's clean the place  
17   up."

18                   So meanwhile, as they take their GED, as they  
19   find better job, hey, we in the community roll up our sleeve.  
20   So now we go to the little businesses. Remember this Pacoima.  
21   I have no Von's Market. I don't even have a sit-down Denny's.  
22   All we have is adult video stores, creepy motels, liquor stores.  
23   But you know what? We make them also support student learning.  
24   Okay? They are going to set up a safe passage to and through  
25   schools, and they do that.

26                   Meanwhile interagencies, foundations, fine. We  
27   roll up our sleeves. It's everybody's responsibilities, so  
28   students interagency partnership, now we have a school-based

1 clinic, a museum, community library, a professional development  
2 center, et cetera.

3 Now the government. We went up to the  
4 government. Good. Why not? You know, come on. Support us.

5 CHAIRMAN PERATA: Which Governor would that be?

6 DR. CHAN: Which Governor? Let's start with Tony  
7 Cardenas at that time, okay? He represent me.

8 So, they put up an unemployment workforce  
9 development in my backyard. Wonderful! Job rehab in front,  
10 wonderful! No such thing as don't build my back yard; job rehab  
11 can be right next door. I said I need it, okay? Over here,  
12 low-income housing, wonderful. Like that. Senior housing, and  
13 so forth.

14 So, really what we prove for the first letter,  
15 "R," for those Senators who missed it, we just went through a  
16 literacy lesson with Senator Perata.

17 CHAIRMAN PERATA: I carried all of you.

18 DR. CHAN: He carried it.

19 I said that I use the concept of REACH,  
20 R-e-a-c-h, for all my work. So, "R" stands for resilience.

21 So now we come together to strong community. And  
22 of course when Senators and foundation folks come and visit us,  
23 they don't guess. They just prepare to say "Yes," right?

24 Okay, the next letter, "E." "E" for me, they  
25 taught me to say, "Got to be entrepreneur." Don't accept what  
26 is. Don't. You can create what can be and what should be.

27 Okay, so finally I was assigned to this school  
28 after 26 with Los Angeles Unified, principal, administrator, two

1 schools before. This school Hispanic, African-American couldn't  
2 get along. Fine. Look at this face. Neutral face. Fluent  
3 Spanish speaking. But when it come to kids' education, there's  
4 no neutrality about that, because absolutely 40 years  
5 warehousing those kids in the heart of Pacoima is not  
6 acceptable. Running 163 days, packing 1,000 kids into 600  
7 school house, not acceptable; 163 school days, don't forget.  
8 There's fire, flood, earthquake. There's head lice. You be  
9 lucky to have 140.

10 So with that, we became the first -- and bless  
11 your heart, you approved that -- the first conversion charter  
12 school in this nation, 1993. We took on and took advantage of  
13 their law, converted their failing school.

14 Exchange autonomy for accountability. It's  
15 freaked me out. Come on. I collect a good salary as a  
16 principal. I don't need that, but however it's time we live up  
17 to what we promised to do.

18 So with that "roll up the sleeve," remember the  
19 first "R"? Now you have the tool. We build three schools  
20 without state bond, without Los Angeles Unified support. We  
21 build three freaking schools, one off year around.

22 How we did that? Really nice worker, parents  
23 were day laborers. High school kids involved, but buy them the  
24 wood and let them build the shelves. A little lopsided, but  
25 they build the shelves. Incarcerated youth that came out from  
26 the juvenile for re-entry, patient and generous Chinese banker,  
27 East West Bank, backed us up a little bit, okay, as well as  
28 female minority contractor. We start building schools one at a

1 time.

2 Now with that, however, we know that to answer  
3 your earlier question, early literacy is important. In our  
4 community, we need universal preschool. I know it's all around  
5 talk about that, but we have, using our entrepreneurship, did  
6 something about it. What did we do? Just like, you know,  
7 Chinese good in match making, that's what we did. Okay. We got  
8 federal Head Start, state preschool -- nobody have enough  
9 money -- and First Five. Remember First Five? Uh-huh.

10 CHAIRMAN PERATA: Vaguely.

11 DR. CHAN: Now the three can come together. They  
12 don't want to be married, fine, but they can house together.  
13 So, marry those three programs together; now we're talking. Now  
14 we have a full day, comprehensive, wrap-around program for every  
15 three and four-year old in the heart of Pacoima.

16 Okay, now the next letter. We have R-e-, letter  
17 "A," right? Achievement, of course. Achievement.

18 Education is the equalizer. I know that. I  
19 captured American dream. Not a word of English at age 17, look  
20 at this.

21 So, I captured a dream, but about what about the  
22 students? My kids, the Hispanic, African-American kids? That's  
23 all I have. What about their American dreams? Many of them, no  
24 future, and don't even have tomorrow. How can we level that  
25 playing field? How can we close the gap?

26 This is my belief. It's a long-term answer. It  
27 took us 13 years. I have a student with me, and she will want  
28 to speak a little bit. I was her principal when she was three



1 years old. Now I'm her principal at high school.

2 The answer is preschool through sixteen.  
3 Responsibility, my dear Senators. Not just one little  
4 principal's elementary schools. We do not pass a buck any more.  
5 I won't. I love them because I know them when they're three  
6 years old, and therefore, no attitude, okay? I have long-term  
7 relationship with all the parents and all the families. Know  
8 them all. Know the whole community. I've been there for 16  
9 years.

10 And, of course, being entrepreneur, being  
11 resilient, and want to focus on achievement, now we're looking  
12 at -- bless your heart again -- you allowed dual enrollment in  
13 California. You know you do. Many states don't.

14 But how can we capture those tools? Existing  
15 resources, they are plenty, believe it or not, if you know how  
16 to do it. So therefore, my kids all sign up at Mission College,  
17 working toward an AA Degree, starting ninth grade, and all 60  
18 units, and, of course, multi-language.

19 Now, let's get to the teachers' part, I'm sure  
20 you'll ask. Adults. We adults must have high expectations of  
21 ourselves, and must have this collective confidence. One person  
22 cannot do it, but we're all college graduates, okay? Even each  
23 one of us has 100 IQ, we will be gifted here.

24 So with that, what we did is -- I know it's kind  
25 of radical -- the Stoll Evaluation Act we no longer applied.  
26 Our teachers put together a Peer Assistance and Review System  
27 which clearly defined the teaching standards. Kids have  
28 learning standards. We don't really have good enough of a set

1 of teaching standards. So that this way, we can take teachers,  
2 novices, all the way up to the proficiency, to the exemplary.  
3 And certainly, yeah, I certainly believe it, we instituted  
4 that. Performance-based pay where they can really be  
5 compensated better.

6 And since we have a staff development, a  
7 professional development center on our side, ah-hah, turn risk  
8 to opportunities, very good. Teachers on Emergency Credential  
9 take the classes from UCLA free. Those great teachers, you can  
10 teach it and get an additional salary.

11 And, of course, we collect a little rent, because  
12 don't forget, we still have to pay a little bit mortgage for  
13 those buildings that we have built. That we call it a little  
14 bit entrepreneurship.

15 Now the letter "C" now. By now you probably  
16 notice, I love to communicate. Communicate. Connect with  
17 people, with diverse people. I go around talking,  
18 "duh-duh-duh-duh."

19 Now, I'm a very hyper person. Sometimes all  
20 kinds of words come out of my mouth. I know gang language. I  
21 know Spanish, French. I do that. I was trained to be a CIA,  
22 Senator, 1966, but just couldn't keep a secret.

23 [Laughter.]

24 DR. CHAN: So being a teacher is the best. So  
25 really right now, I do believe in multi-lingualism. I do  
26 believe in that.

27 And as a charter school, as you know, I don't  
28 have to following Prop. 227, because each child is different.

1 My kids can have dual language: English, Spanish, fluent. It's  
2 an asset. Now they have four years mandatory Chinese. They  
3 have three years elective Arabic. And we're building an  
4 international studies high school, learning global issues, and  
5 work toward world peace.

6 You talking about we're outsourcing, we make  
7 China outsource back.

8 Now the last one here, and I'll end, is the  
9 letter "H," and "H" is a four-letter word with a long vowel  
10 sound. See if you can guess. Uh-oh, we're in trouble.

11 SECRETARY WEBB: Hope.

12 DR. CHAN: Thank you very much. High hope.  
13 Hope, hope, hope, hope. I believe in kids. You got to have  
14 high hope. Hope for our future, because failure is not in the  
15 DNA of these kids.

16 Yeah, I know it's a Chinese cracking open those  
17 fortune cookies. Huh-uh. I will crack as many as I need until  
18 I get the right fortune. I believe. And if not, I will write  
19 it myself. That's about it.

20 So, I am very hopeful that my kids will be  
21 college-bound or workforce ready.

22 Can you imagine, four world languages, AA Degree?  
23 And they should be a sure field-in.

24 But I want to make sure that hope will stretch,  
25 so this summer I'm going to take them across country, California  
26 all the way to Boston, and visiting every single major  
27 university. They will equal opportunity program, and start  
28 knocking on their doors. We will walk, ride, ride train, take

1 mule, crawl, whatever. We will get there.

2 And I do have a Special Ed student, Francisco,  
3 who will come with us. And he said, "Dr. Chan," because he  
4 wanted to go to UC Davis. He said, "Dr. Chan, if we have to  
5 walk, and when you're tired I will carry you. All you have to  
6 do is just point."

7 So let me end by just sharing the biggest  
8 injection, and that will go all over to what I do, of injecting  
9 the hope in what I have. Even I speak to you with the  
10 confidence. It doesn't matter you approve, not approve, but I  
11 am still the best educator. I speak with confidence.

12 The injection of hope was 2001, when I took my  
13 entire group of teachers, 86, to China. Took over four schools,  
14 and that's four days after the downing of our spy plane.  
15 Remember the incident?

16 Oooh, I was told, "Yvonne, don't talk about  
17 democracy. Don't talk too much about human rights."

18 We went to co-teach. At the end of two weeks,  
19 the community, a lot of people, because I planning so well, you  
20 know, working, dah-dah-dah-dah. I didn't try to say too much  
21 Chinese because I want to be careful, you know. Colin Powell is  
22 still doing the, you know, negotiation.

23 But at the end the community ask, "Who is the  
24 boss of these Big Noses?"

25 They call you Big Noses.

26 CHAIRMAN PERATA: They do?

27 DR. CHAN: Yep, and you know, at that moment --

28 SENATOR BOWEN: I'm taking that personally.



1 [Laughter.]

2 DR. CHAN: But they're pretty big nose.

3 SENATOR BOWEN: That's the problem.

4 [Laughter.]

5 DR. CHAN: I couldn't help it. I got on to that  
6 town square in front of thousands of Chinese. In my very best  
7 Chinese I said, "The United States of America, its public  
8 education offer equal opportunity, the access and the rights I  
9 have. And it is that democratic system that now I have the  
10 opportunity to be the boss of all these beautiful Big Noses."

11 And I'm very proud to be the boss. That is not  
12 being the boss of Big Noses, but more important is, I'm a boss  
13 of my destiny.

14 So, I hope with your confirmation today that you  
15 are licensing me to build many more Gold Mountains -- remember  
16 California -- so that kids in California that I will be  
17 responsible for can reach and keep reaching every single dream.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 Are you sure you want to bother?

21 [Laughter.]

22 MR. NOONAN: Thank you very much. I don't know  
23 how to follow that, but you can see that we do have some very  
24 exciting Board meetings.

25 CHAIRMAN PERATA: No kidding!

26 MR. NOONAN: They are fun now.

27 CHAIRMAN PERATA: I bet.

28 MR. NOONAN: Thank you for the opportunity to

1 talk to you.

2 I want to tell just a little bit about myself  
3 because my last name probably doesn't tell you a whole lot. I  
4 born in a family of Irish, Mexican, Pavico Indians. Born and  
5 raised in Montebello, native-born California.

6 I won't tell you how all that happened. It takes  
7 a lot more time than we've got today. But I was raised in a  
8 home where Spanish and English were used equally, and my sister  
9 and I grew up in that kind of an environment.

10 I went to public and private schools. Didn't do  
11 well in college. I actually studied to be a Catholic priest for  
12 a while. The Church got lucky; I left before anything real  
13 important happened.

14 [Laughter.]

15 MR. NOONAN: Then I went to Cal. State L.A.  
16 Didn't do very well, so I joined the Navy. My timing was  
17 terrific. I ended up in Vietnam as the war broke out, so I'm a  
18 Vietnam vet. Served on the Valley Forge with a lot of Marines.  
19 So, it was a very exciting time.

20 But I came back to college running as fast as I  
21 could to get that college education, and I used the GI Bill, got  
22 my degree, my credential, and started teaching in the Montebello  
23 schools, high school and junior highs. We didn't have middle  
24 schools then, had junior Highs.

25 I've taught in several districts, but when I got  
26 to Pomona, I began as a bilingual teacher in a middle school.  
27 Within three years, I was director of the bilingual program,  
28 very large program, in Pomona Unified School District. And I

1 taught at almost all levels in the secondary level and became an  
2 administrator, and not long after that had an opportunity to  
3 become superintendent in Corcoran, California, Central Valley.  
4 Taught -- or, I was the superintendent there for about six  
5 years. Then was called to work in Gilroy, California School  
6 District for almost 13 years. And then I was called to work in  
7 Oceanside, the best professional experience I've ever had.

8 Oceanside, California, 22,000 students. Three of  
9 our schools on the Marine Corps Base. A great community with  
10 great support for schools. A lot of kids with a lot of  
11 educational needs.

12 So, I have always worked in school districts  
13 where there are a lot of poor children, minority children, and  
14 English learners. And at the time that was law was passed, 61  
15 percent of the voters decided 227 was a good idea. I  
16 implemented that exactly as the law read. I was a little naive.  
17 I thought everybody was going to do it the same way. There are  
18 800-plus school districts, and there about 800-plus ways of  
19 doing it.

20 But it worked out well. In fact, I campaigned  
21 against 227. I didn't believe in it. I was a supporter of  
22 bilingual education. And until that happened, I did not realize  
23 that different things could happen for kids in school. And  
24 after the first year, teachers who were also skeptical, who  
25 worked with me to implement the program as it was written,  
26 called me to their classrooms. I was worried. They told me it  
27 was working extremely well. These were bilingual trained  
28 teachers who said, "This is a great project," and I've been a

1 convert.

2           The converts are the greatest believers. And I  
3 am a convert. I saw not only test data from the state, but  
4 consistency in teaching. I also went and observed the kids as  
5 they read. I read with the children and saw they could read and  
6 learn English very, very quickly, much more quickly than I  
7 thought.

8           Since that time, I've worked hard to make sure  
9 that all children at least come out of high school with a very  
10 strong working knowledge and understanding of English, the  
11 English language. And they've done that.

12           My belief is that every child should be prepared  
13 to go to college. That decision belongs to the child and the  
14 parent, not to the superintendent, or the principal, or a high  
15 school counsellor. And unless they have the skills -- reading,  
16 writing, math -- and those skills move ahead, they can't make  
17 that decision. And so, that's been the goal that has reformed  
18 public education in California so that even that bottom 25  
19 percent, minority and poor children, have an opportunity to move  
20 ahead.

21           Minority and poor children, I believe, do not do  
22 poorly in school because they're a minority or because they're  
23 poor, but because we have not taught them well. There are  
24 schools in California that are teaching these kids very well.  
25 One I would point out, while there are several, is a school in  
26 Oceanside that is a true Title One school, 60 percent English  
27 learner, a lot of African-American and Latino children who live  
28 in the heart of the barrio, very tough community. They just



1 broke 800 this year, after starting in 400s, and they've just  
2 been named a California Distinguished School.

3 It can be done, and that is my goal. One of my  
4 goals in serving on the Board is to make sure that that bottom  
5 25 percent gets that same break. I think it can be done and  
6 should be done.

7 If you ask what my role, or what I believe my  
8 role should be on this Board, it is first of all to make sure  
9 that the reform that has been started in this state by the  
10 Legislature and the administration continues, does not stop,  
11 does not slow down.

12 And second, that we build a strong relationship  
13 with Legislators. I think one of our roles on the State Board  
14 is to make certain that legislation is developed into working  
15 policy and regulations appropriately, and to do that I think we  
16 need to have a strong relationship.

17 I don't know if you have other questions, but I  
18 would say that my goal is to continue to reform California's  
19 education, and I hope you will give me that chance.

20 In closing, let me tell you, Mr. Bersin, who has  
21 done, I think, a fine job on the Board, started out by saying  
22 that he was pleased to be here before you.

23 A little while ago, I could not have said that  
24 that clearly. I visited your meeting with the UC Regents, doing  
25 my homework to see how you treated folks because of a story I'm  
26 going to tell you.

27 A gentleman you know, whom I won't name, who was  
28 an administrator here in the state, told me after my appointment

1 was made a year ago that I would have to be confirmed by this  
2 Committee. I said I couldn't understand that. You know, I was  
3 confirmed when I was twelve. Why do I have to do that again?

4 [Laughter.]

5 MR. NOONAN: And I said, "You know, at that time  
6 the Bishop, as a part of the ceremony, slapped my face to show  
7 that I needed to be strong in my faith."

8 And the gentleman said, "Perfect, because that's  
9 what they're going to do to you in the Senate hearing."

10 So, about a month-and-a-half ago I came here to  
11 watch you with the Regents. You don't remember me. I sat in  
12 the back. And I thought, these are really nice people. Okay, I  
13 feel much better.

14 And coming here today, I felt much more  
15 comfortable coming before you. It's been a long year of  
16 anxiety, I think, for all of us, waiting to come before you.

17 I'm here to answer questions if you have any.  
18 I'd be delighted if you would allow me also to continue to serve  
19 on the Board and to do the good work for the kids of  
20 California.

21 CHAIRMAN PERATA: Thank you, sir.

22 I would like to ask you first if you have family  
23 here, if you'd like to introduce them?

24 DR. CHAN: Yes, I have my student, Eunice  
25 Hernandez, who represents the student body and wants to speak.  
26 This is a good experience for her to speak.

27 CHAIRMAN PERATA: Okay, then I'm going to let her  
28 then because you said it was a good experience.

1 Do you want to have her come up.

2 DR. CHAN: Yes, come on.

3 CHAIRMAN PERATA: Do you have family here, sir?

4 MR. NOONAN: Not family, but folks here who would  
5 like to speak.

6 CHAIRMAN PERATA: Absolutely.

7 How are you?

8 MS. HERNANDEZ: Hi, okay.

9 Hi. My name is Eunice Hernandez. I represent  
10 1800 students at Vaughn Learning Center.

11 I'm here to ask you with confidence -- oh, I'm  
12 sorry -- I'm here to ask you to have confidence in my principal,  
13 Dr. Chan, and appoint her to the State Board of Education.

14 I've known Dr. Chan for 13 years. She was my  
15 principal since I was in preschool. I'm now 15, and I'm in  
16 ninth grade at Vaughn. Dr. Chan is still my principal,  
17 preparing me for Harvard and Stanford because I have choice.

18 I'm a product of her dreams and her hard work.  
19 Therefore, I feel very qualified to share what I know about her  
20 with you.

21 Today I have three important points to make.  
22 First of all, Dr. Chan always put us, the students, first. For  
23 example, after working 12-hour day, she goes to the kids' house  
24 at night, especially those who keep missing school, or do not  
25 show up for tutoring. She would cruise the neighborhood with  
26 her head sticking out of her car's sun roof, holding a blow  
27 horn, reminding our parents to come to a school meeting.

28 Back then our school was so overcrowded that we

1 went to school for only 163 days, and 250 students had to ride  
2 the bus to other schools. Without help from the state or our  
3 district, she mobilized our parents and community and managed to  
4 build three new schools. She always says, "When we put you  
5 first, miracles do happen."

6 We are now -- we now go to school 200 days. We  
7 added a primary center, a middle school, and we are now building  
8 a new high school. But she's not done yet. She said, "Poverty  
9 is your destiny, and you will go to college."

10 I'm in ninth grade, and I'm taking college  
11 classes with all my classmates. When I graduate, I will have  
12 earned 60 college credits and an AA Degree from Mission College.

13 Is she done? No. This September she is taking  
14 all of us to the road. She will take us from California to  
15 Washington, D.C., from sea to shining sea, visiting  
16 universities, studying U.S. geography and history, and examining  
17 global issues. By eleventh grade, she will take us to China so  
18 we can all compete globally.

19 With Dr. Chan we have endless opportunities. She  
20 sets the bar very high for us, and we do reach it.

21 Secondly, Dr. Chan is a great role model. She  
22 runs around the campus picking up trash. We pick up trash. She  
23 talks to us in English, Spanish, and Chinese. We try to respond  
24 in English, Spanish, and Chinese.

25 Dr. Chan likes to include everyone. When we won  
26 the National Blue Ribbon Award, 180 us -- teachers, parents, and  
27 students -- all went to Washington, D.C. to accept the award.

28 She also took 85 teachers to China to co-teach in



1 Beijing and Shanghai a few years ago.

2 Dr. Chan always shows confidence. She interacts  
3 with very important people. Both President Clinton and  
4 President Bush, with dignitaries, visited us, such as Hillary  
5 Clinton, Governor Schwarzenegger, Mayor Villaraigosa. She  
6 taught us how to interact with them with confidence.

7 Thirdly, I've seen her being beat down, but she  
8 never gives up. For example, when we first converted to a  
9 charter school, the system was not friendly to us. She had to  
10 mortgage her house. She fought many people to make sure we  
11 continue to receive free meals, to make sure our classmates with  
12 disabilities receive services, and that our teachers get paid.

13 Now, the last example, when two students at  
14 Vaughn died because they lacked medical care, she went after a  
15 lot of people. She negotiated hard with the county and  
16 foundations to get a school-based clinic on our campus. No one  
17 has died since.

18 In closing, Dr. Chan is a very loving principal  
19 who believes in us. She will do whatever it takes to help us  
20 succeed. Since we are doing so well, we should share with her  
21 with all the students of California who need her leadership.

22 Like The Little Engine That Could, she could.  
23 Dr. Chan is a principal who could.

24 Please be the Senators who could and confirm her  
25 today. Thank you.

26 CHAIRMAN PERATA: Thank you. Thank you for being  
27 here. That's wonderful.

28 That makes the years worth it right there;

1 doesn't it?

2 If somebody else wants to give it a shot, Denise,  
3 did you want to talk?

4 SENATOR DUCHENY: I'm sorry. I back went  
5 upstairs during that lengthy one and missed the opportunity to  
6 introduce Mr. Noonan, but I understand you already --

7 CHAIRMAN PERATA: He did a pretty good job.

8 SENATOR DUCHENY: You heard from him, all right.

9 I just was here to do that, Members. I think  
10 from some of the discussion we heard earlier, this is somebody  
11 who actually was born and raised in California, went to  
12 California public colleges and private colleges, and became a  
13 bilingual teacher in a lot of the areas of the state, from  
14 Montebello to Pomona, to Corcoran, and other areas, and has most  
15 recently been the Superintendent in Oceanside.

16 Those schools have seen enormous progress under  
17 his leadership, and it's a very difficult school district,  
18 politically and a lot of different ways, to balance. It's next  
19 to the Marine Base, has a very interesting changing demographics  
20 kind of population.

21 I think it's important that we have people on the  
22 School Board who have that ground experience. This is somebody  
23 who's been a teacher, been an administrator, been a  
24 superintendent, taught bilingual education. We are talking a  
25 lot about English language learners at the State Board.

26 One of the frustrations of many Members of this  
27 Legislature has been the lack of expertise on English language  
28 learner issues at the State Board for many years.

1                   And I think when I first met with Dr. Noonan last  
2 summer, when he was first appointed to the Board, there are some  
3 issues with some districts, you know, about the model they've  
4 used in Oceanside. And he was very clear about the role as a  
5 State Board person being people doing what's best for them. And  
6 that not necessarily, even if something worked in Oceanside,  
7 that doesn't mean that's going to be the same method that works  
8 in Chula Vista. And that as a State Board member, we need  
9 people that understand all students do not learn the same; all  
10 districts do not function the same, and systems work in  
11 different ways, and all students need to be given the  
12 opportunity to succeed in whatever way best suits them.

13                   I think this is somebody who really has that  
14 experience, both as a teacher and an administrator, has brought  
15 some good expertise to this Board, although sadly, they still  
16 don't seem to have majority on the Board, based on the vote on  
17 Monday. The three people that were up today were in the  
18 position that voted at least the way many of us believe was  
19 appropriate, and I think Ken's voice on that Board is an  
20 important one to keep, to have that practical perspective  
21 available to the state.

22                   I think I'm happy to be here to support his  
23 confirmation.

24                   CHAIRMAN PERATA: Thank you, Senator.

25                   Anyone who wants to come up and speak in favor of  
26 either, both, please feel free to do so.

27                   MR. SKELLY GRIFFITH: Mr. Chair and Members,  
28 Sherry Skelly Griffith with the Association of California School

1 Administrators.

2 We'd like to speak on behalf of both nominees.

3 We are very pleased to support confirmation of  
4 Yvonne Chan. The majority of our members are school site  
5 leaders, and we think it's critical to have that perspective on  
6 the State Board.

7 Ms. Chan really understands and supports the work  
8 of so many school leaders today who are working with high  
9 poverty schools and high numbers of English learners. She's a  
10 passionate educator with her students and dedicated to her  
11 students in California. She wants the very best in our schools,  
12 from quality textbooks to efficient categorical programs. She's  
13 very accessible and open to all possibilities.

14 I know for a fact that Ms. Chan works until after  
15 7:00 o'clock almost every night because I've called her at her  
16 school. She's extremely dedicated, and we're very proud to  
17 recommend her nomination.

18 In regards to Mr. Noonan, this is a very proud  
19 and historic day for school administrators across this state.  
20 This is the first time in our 35 years as an association we've  
21 been able to support an acting district superintendent. There's  
22 never been an acting district superintendent on the State Board  
23 of Education.

24 From teaching and learning, to local board  
25 policy, to implementing state and federal law, and managing to  
26 maintain a healthy district budget, Ken Noonan understands it  
27 all. Ken was named ACSA's Superintendent of the Year in 2003,  
28 and he only had to beat out 900 other school district



1       superintendents. And he did a great job.

2                       But seriously, he was actually nominated by his  
3       peers from across the state and chosen because he exemplifies  
4       what leadership is all about in our school system.

5                       What makes Ken so right for this job is, he puts  
6       children first, as you've already heard from many.

7                       And the issue that the principle of No Child Left  
8       Behind, Ken has lived that for over 30 years before it became a  
9       catchy slogan.

10                      So with that, we are so proud and honored to  
11       recommend one of our own, Mr. Ken Noonan, for the State Board of  
12       Education.

13                      CHAIRMAN PERATA: Thank you very much.

14                      MS. DOHN: Hi, Kari Dohn on behalf of the  
15       California Charter School Association, in strong support of  
16       Dr. Chan.

17                      She is truly a shining example of what is  
18       possible in public education. And we at the Charter School  
19       Association are so very proud of what she's done with Vaughn  
20       Next Century Learning Center. It's truly become a model across  
21       this country and, indeed, even across the world.

22                      So, we urge your strong Aye vote, and we are  
23       strongly in support of her confirmation.

24                      Thank you.

25                      MR. ELIZONDO: Good afternoon, Chairperson Perata  
26       and Members of the Committee. I'm Fernando Elizondo. I am the  
27       Executive Director of the California Association of Latino  
28       Superintendents and Administrators.

1 I'm also retired after 38 years in public  
2 education as a teacher, as an administrator, and 14 of those as  
3 a superintendent of schools.

4 I'm here in support of having you confirm  
5 Superintendent Ken Noonan on the State Board of Education.

6 He's a good guy. He really is.

7 I've been here for three hours, listening to a  
8 lot of accolades, and you just kind of boil it down to, he's a  
9 good guy.

10 He's competent; he's astute; he has a sense of  
11 humor. All the attributes of a leader, someone that we really  
12 need to have in such a powerful position on the State Board.

13 There's two reasons that I'm up here before you.  
14 One, obviously, is he brings, and you've heard people articulate  
15 this much better than I'm going to, he brings experience from  
16 the field. And that's important to us as educators, to have  
17 somebody that's there on a day-to-day basis. He brings to us  
18 experience from the classroom to obviously a very successful  
19 tenure as a superintendent of schools. It's invaluable as he  
20 looks at very, very complex and certainly comprehensive issues  
21 that he faces as a State Board of Education member, and they  
22 affect thousands and thousands of children, and you heard just  
23 pieces of that today and some of the issues that they've had to  
24 deal with.

25 Experience, common sense, and strategies and  
26 solutions from persons dealing with issues on a daily basis.  
27 Extremely powerful, and that's why we need his voice and his  
28 expertise on the Board.

1           The second piece is more of a historical point of  
2 view, and you've heard pieces of this also. It speaks to his  
3 passion and leadership of a person, and then as an educator, and  
4 it starts in 1983, a much younger administrator, Ken Noonan and  
5 myself, meeting in his room, in some cases in his home and  
6 offices. And him as a director of compensatory education in  
7 Pomona, me as a director of bilingual education. Very, very new  
8 system of education in the early '90s [sic] as we received a  
9 tremendous amount of money from the federal government.

10           And he was one of very few, if not only, persons  
11 who convened a group talk to us. And that group could probably  
12 sit around at this table right here and talk about issues, such  
13 as curriculum for bilingual, or what we called ELL students.  
14 Virtually none existed.

15           We talked about, and spoke, and brain-stormed  
16 about instructional strategies. Very little instructional  
17 strategies just available in 1983. Materials, where were they?  
18 Staff development, virtually nonexistent.

19           We continued those discussions, and the reason we  
20 didn't have more people around the table is because, as we would  
21 say, it wasn't politically correct at that time to take on and  
22 carry the banner for bilingual education. And that has been one  
23 of the issues. And we have continued to do that under his  
24 leadership. And as we move through the chairs, if you will,  
25 from principal, to central office, to superintendents, we  
26 continue to talk and to discuss these issues.

27           And today, although he's much more of a public  
28 figure than many of us are, many of us that sit in those chairs

1 attribute our philosophy to much what he said today before you,  
2 in offering as many options for children that come to us that  
3 need different instructional strategies. And that's what he's  
4 about. That's what we're about. His is a much more public  
5 agenda.

6 We certainly need to have a person of his caliber  
7 on the State Board to look and to continue to advocate the issue  
8 of options for our different kids, but options that direct  
9 themselves to closing that gap and providing as many  
10 opportunities for our English language learners, opportunities  
11 for higher education. And that's what we're all about. Any  
12 superintendent before you would aspire to that, and would ask  
13 you to confirm him as our one of our next State Board of  
14 Education members.

15 Thank you.

16 MR. ACEVES: Senator Perata and Members of the  
17 Rules Committee, actually, Fernando stole most of my thunder, so  
18 I won't repeat those same words.

19 I'm Larry Aceves. I am Superintendent of Schools  
20 currently in the Franklin McKinley School District in San Jose.  
21 I'm a past President of the Association of California School  
22 Administrators, and also a past President of the Latino  
23 Superintendents Association.

24 I've known Ken for the better part of 15 years as  
25 a fellow superintendent. We've worked together. Actually, we  
26 were in the same county when he was in Gilroy, and I've kept up  
27 with him ever since.

28 This is my 33rd year in education, and I don't



1 have a lot of heros. I think all of us have to stand in the  
2 trenches together, but Ken is one of my heros. Ken is one of  
3 those folks that always speaks first of what's best for  
4 children, what can we do.

5 I think going down to Oceanside and making a  
6 decision that in his own mind was not what he believed in, but  
7 was willing to try it, speaks well of Ken. He's not locked in  
8 some sort of, this is the way it has to be for everyone.

9 He has very strong personal beliefs, but I've  
10 always appreciated the fact that he advocates for local choice.  
11 That it is up to the local district to make things work and be  
12 held accountable.

13 He's a highly ethical person, and very, very  
14 committed to the education of all children.

15 I don't want to repeat everything, but I just  
16 want to mention that really from folks in the field, I've been  
17 up and down the state, the fact that a sitting superintendent  
18 could be a member of the State Board of Education is very  
19 significant for us; in effect, that there is someone there that  
20 understands what implementations and policies will be.

21 And I urge your endorsement of Mr. Noonan for the  
22 State Board of Education.

23 Thank you very much.

24 CHAIRMAN PERATA: Thank you.

25 MS. DOWEY: My name is Ana Dowey. Thank you for  
26 allowing me this opportunity to come here.

27 I'm very honored to be here today. I just want  
28 to express my support for Mr. Noonan.

1 I'm here as a naturalized citizen -- I'm from  
2 Guatemala -- and also as a taxpayer. Lots of my paycheck goes  
3 to you guys. I wasn't used to that, but now I am.

4 Another one of my qualifications is that I'm a  
5 mother of two boys, eleven and nine. And I keep very involved  
6 in school. I belong to a PTA from the elementary school and the  
7 middle school.

8 Of 2,000 students, we have five parents in the  
9 PTA. So, it's been very hard. So, Mr. Noonan has to work very  
10 hard.

11 I'm telling you, there is so much poverty, and  
12 there is very, very little response from parents. There is so  
13 much apathy.

14 Another one of my roles is, I'm a professor at  
15 Palomar College. I teach microbiology, and I love for my  
16 children to learn science. I come from a science family. And I  
17 notice that a lot of children don't have that opportunity in the  
18 United States, and I really believe everybody should.

19 So, with Mr. Noonan's help, we started a new  
20 program that is called My First College Class. And we bring the  
21 children, kindergarten to fifth grade, to college and to science  
22 with me. We do our hands-on science. And you are very much  
23 welcome to come and check out those kids, opening their hearts  
24 and doing chemistry tests, doing electricity, magnetism, many  
25 things that they have no chance to do at the elementary  
26 schools. Why? Because there really is no money for them to do  
27 that.

28 And I think this country is a blessing, and

1 children shouldn't have to go through that. I think we have the  
2 money to provide that for our children.

3 So, I went to him, and he provided me with the  
4 money. So, now we have two grants, and we bring in all the  
5 children, and he gives me actually the busing for free.

6 And it's to me, as a parent, and to me as a  
7 professor, I notice that even with the parents that don't speak  
8 English, there is such an enthusiasm to come and help. There  
9 are always 10 to 15 parents per every 60 students we bring,  
10 helping even if they don't speak the language.

11 And I think with that, Mr. Noonan, I don't think  
12 I could have had this chance at all. Actually, he was my second  
13 choice. My first choice was my husband's credit card.

14 [Laughter.]

15 MS. DOWEY: Was after that run out, then he was  
16 my second choice.

17 But he's been wonderful. So, I really, really  
18 would appreciate if you really think very seriously, consider  
19 his appointment. And I really think I speak for a lot of  
20 parents from Oceanside.

21 CHAIRMAN PERATA: Thank you. Thanks for being  
22 here.

23 MR. WOODHEAD: Good afternoon, Senator Perata and  
24 Members of the Committee. My name is Jim Woodhead. I'm a  
25 member of the Advisory Commission on Special Education.

26 The commission has had a long-standing objective  
27 to improve communications with the State Board of Education and  
28 the other governmental agencies that contribute to the welfare

1 over 700,000 students with individualized education plans in the  
2 state.

3 Towards that end, I was appointed as a liaison to  
4 the State Board of Education, and Dr. Chan showed up with a  
5 background in special education, and within a couple of meetings  
6 had volunteered to serve as liaison with the commission, and she  
7 has been a God send.

8 You have experienced her liveliness. I operated  
9 in the fields of special education for 35 years, 25 as a speech  
10 pathologist and 10 as teacher of preschool with students that  
11 had communicating disabilities. And some of my students were  
12 not especially pleasant human beings when they came to my class.  
13 With work, many of them became very pleasant folks.

14 In the field of special education, sometimes we  
15 feel like we are the unwanted step-child of public education.  
16 If you recall, that's how it started out for Cinderella.

17 We need -- we need people like Yvonne Chan on the  
18 State Board of Education because of her enthusiasm and because  
19 of her energy. She gives me hope that there is a place in the  
20 adult world for individuals who are laboring under adult  
21 attention deficit hyperactivity disorder.

22 [Laughter.]

23 MR. WOODHEAD: She has certainly --

24 CHAIRMAN PERATA: She can get a license plate.

25 [Laughter.]

26 MR. WOODHEAD: She has certainly directed her  
27 energy towards positive ends, and I urge you strongly to confirm  
28 her with enthusiasm.



1                   Having observed the State Board, I would also  
2 like to say that Ken Noonan seems like a nice guy, too.

3                   [Laughter.]

4                   CHAIRMAN PERATA: Thank you, sir.

5                   Anyone else?

6                   MR. FROST: Mr. Chairman and Members, Jeff  
7 Frost. I'm the legislative advocate for the California  
8 Association of Suburban School Districts.

9                   Oceanside is a suburban school district, but as  
10 Ms. Ducheny says, the demographics are rapidly changing, and  
11 that's a characteristic over the entire state.

12                   My membership, the superintendents of my  
13 organization, are colleagues with Mr. Noonan. They strongly  
14 endorse him and think that he would be open-minded member of the  
15 State Board and one that represents the field. We strongly urge  
16 you to support.

17                   Thank you.

18                   CHAIRMAN PERATA: Thank you.

19                   MR. LEE: Members of the Committee, my name is  
20 David Anthony Lee, and I am President of the Oceanside Teachers  
21 Association.

22                   And I am honored to be here today. As President  
23 of the Oceanside Teachers Association, we are an affiliate of  
24 the California Teachers Association, and I am elected to  
25 represent 1150 teachers in Oceanside.

26                   In the area we have a master contract with  
27 Oceanside Unified School District, which means that I meet with  
28 Superintendent Noonan on a regular basis, a weekly basis.

1 Basically our relationship with the superintendent is such that  
2 I tell him how to do his job.

3 [Laughter.]

4 MR. LEE: Which means, it requires that the  
5 superintendent has to have a tremendous amount of patience with  
6 me.

7 Our political opinions are somewhat different. I  
8 am a life-long Democrat, as are my parents and me grandparents.  
9 Superintendent Noonan and I differ, have different views in a  
10 lot of those areas, but I won't go into that today.

11 But we agree in many areas when it comes to  
12 educating students in Oceanside, and that's why I am here today.  
13 Three years ago, when I was elected into this position, I  
14 started to get to know Superintendent Noonan, and I could not  
15 have predicted then that I would be appearing before a panel  
16 such as this today to lend my voice to support him in this  
17 role. But here I am today, and I would like to lend that  
18 support.

19 He is an incredible educator. He is honest. He  
20 is very much committed to students. He has exemplified what it  
21 means to be hard working, competent, prepared, and capable in  
22 all areas of leadership. He is very hard working. He's a  
23 remarkable man.

24 As I've sat and listened to all of the people  
25 that have known him over the years speak about him, I am struck  
26 by how much they don't know about him, because we work with him  
27 on a daily basis, and he sets a tremendous example for all of us  
28 that know him very, very well.

1                   So, you've been very, very patient today, and I'm  
2 very confident that you will vote in the affirmative to continue  
3 to permit him to serve the people of California and to carry out  
4 the policies and the laws of the Legislature.

5                   So, thank you for permitting me to speak before  
6 you.

7                   CHAIRMAN PERATA: Thank you.

8                   MS. WICHMANN: Members of the Committee, my name  
9 is Emily Ortiz Wichmann. I am President of the Board of  
10 Oceanside Unified School District.

11                  I have worked with Ken for the past nine years,  
12 and I was on the board when we hired him.

13                  Ken is a man with incredible experience and  
14 knowledge, being in the trenches, what I've heard today, which  
15 he has used to unify and enable our school district to go above  
16 and beyond, when many said that was impossible. And there's no  
17 question to his philosophy that every child can be educated,  
18 must be educated, regardless of race, ethnicity, color, or  
19 socio-economic status.

20                  Ken's leadership style is second to none. He's  
21 focused, motivating, enthusiastic, and effective. His  
22 communication skills are superb.

23                  Ken also exhibits a great deal of common sense,  
24 which I find lacking in some aspects of education, and his sense  
25 of humor never fails to lighten up a sometimes dreary and  
26 tedious meeting.

27                  Ken has been a role model and mentor to many. In  
28 our district, two individuals have gone on to be

1 superintendents. He now has brought on board those who are  
2 bringing to the district another dimension for the improvement  
3 of our students.

4 Ken is always striving to prepare our students  
5 for a better life by providing quality education. Ken is an  
6 exceptional leader, educator and individuals. He is an asset to  
7 any organization and would further enhance the effectiveness of  
8 the Board of Education, of the State Board of Education.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 MS. ADAMS: Chairman and Members of this  
12 Committee, I am Lillian Adams, Vice President of the Oceanside  
13 Unified School Board.

14 I am very pleased to have the opportunity to  
15 speak to this august body on behalf of Ken Noonan. He's a  
16 visionary and a capable leader. Most importantly, Ken is an  
17 advocate for all students. He has strong valid beliefs about  
18 student achievement, and has no qualms about sharing them with  
19 others.

20 His great communication skills are evident in the  
21 way in which he relates to students, parents, staff and school  
22 members. He is respected as the educational leader in our  
23 community.

24 In our school district, Ken has set high goals  
25 for our students. Every student will not only graduate, but  
26 will be so equipped that they will be able to function  
27 successfully in the global community. He has consistently  
28 proven his outstanding educational leadership skills and will



1 continue to share his expertise on the state level.

2 I recommend to you Ken Noonan as a superb  
3 addition to the State Board of Education.

4 Thank you.

5 CHAIRMAN PERATA: Thank you.

6 I don't think everybody here has spoken yet.

7 Will the two nominees come back up here for a  
8 second. We don't want to do anything when you're not watching.

9 Any questions by any Members?

10 SENATOR CEDILLO: Move the nominations.

11 CHAIRMAN PERATA: Motion to approve both.

12 I just want to say that you are a pair of  
13 outstanding appointees, and I'm very encouraged by your being on  
14 the Board. It's nice to have people that have done as  
15 remarkably well in education for as long as you have.

16 And I have one question that I want to ask, and  
17 that's where did Vaughn come from?

18 DR. CHAN: Oh, all the schools --

19 CHAIRMAN PERATA: You said you didn't have a  
20 Von's.

21 DR. CHAN: It's V-o-n-s. There's another  
22 literacy.

23 Vaughn, V-a-u-g-h-n, is the name of the street.  
24 See, all the public schools are named after streets, and a big  
25 gang over there.

26 CHAIRMAN PERATA: Thank you. A simple, straight  
27 forward answer. I like that.

28 Well, congratulations to both of you. Thank you

1 for doing what you're doing.

2 I'd just encourage you to be as aggressive as you  
3 can be on behalf of the things you believe, because I think a  
4 lot of us, most of us in this building, and I would say  
5 throughout California, believe in the kind of forthrightness,  
6 the kind of philosophy that you have.

7 If we could get you to be a little bit more  
8 enthusiastic.

9 [Laughter.]

10 CHAIRMAN PERATA: I'm sure you'll work on that in  
11 the second half of your career.

12 And I want to compliment the young lady behind  
13 you.

14 DR. CHAN: Eunice. She wants to take picture  
15 with you later.

16 CHAIRMAN PERATA: It was remarkable. I'm sure  
17 you wrote that yourself, and I also want to compliment you on  
18 using an adverb where a lot of people don't when you said  
19 "secondly." I used to teach English.

20 With that, we have a motion to approve. Please  
21 call the roll.

22 SECRETARY WEBB: Ashburn.

23 SENATOR ASHBURN: Aye.

24 SECRETARY WEBB: Ashburn Aye. Cedillo.

25 SENATOR CEDILLO: Aye.

26 SECRETARY WEBB: Cedillo Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Three to zero.

1 CHAIRMAN PERATA: It is unanimous,  
2 congratulations.

3 MR. NOONAN: Thank you.

4 DR. CHAN: Thank you very much.

5 [Thereupon this portion of the  
6 Senate Rules Committee hearing  
7 was terminated at approximately  
8 4:30 P.M.]

9 --ooOoo--

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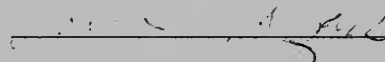
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

  
EVELYN J. MIZAK  
Shorthand Reporter





**APPENDIX**

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# Office of the Secretary of Education

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D SCHWARZENEGGER  
OR

ERSIN  
RY

March 20, 2006

The Honorable Don Perata  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814

Attn: Nettie Sabelhaus

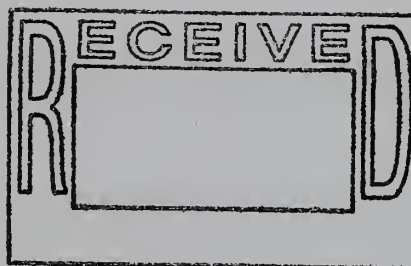
Dear Senator Perata:

I am enclosing, for the review and reference of the Rules Committee, a copy of my responses to the questions posed by the Rules Committee.

Please call me at your first opportunity if you have any questions concerning this matter. Thank you for your consideration.

Yours sincerely,

Alan Bersin  
SECRETARY OF EDUCATION

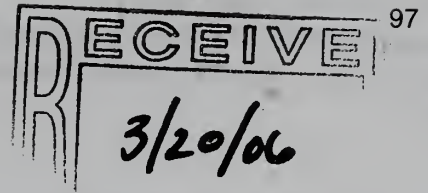






**Senate Rules Committee:  
Responses to Confirmation Questions**

**Alan Bersin – State Board of Education**



97

**What do you hope to accomplish as a member of the State Board of Education?**

I will strive to use my experience as a local school district leader to help inform statewide policy. State policy significantly influences our schools' capacity to support teachers and students to improve teaching and learning in the classroom. I believe that continuing our commitment to standards-based reform, which has redefined public education in California, is crucial if we are to narrow and then close the academic achievement gap in the course of providing each of our students a quality education. This includes maintaining and improving our California subject matter standards, supporting quality professional development for teachers and principals, and refining our assessment and accountability systems.

I will work with my colleagues on the State Board, the Legislature, the State Superintendent of Public Instruction, county and district boards and superintendents, and all education community stakeholders to improve state board decisions as they affect these crucial areas of policy and practice.

As a parent, as well as a former superintendent of schools, I will work to support policies that strengthen the relationship between parents and teachers, between the home and the classroom and between schools and the community. I want to work for more transparency and information that is easier for students and their families, as well as the general public, to understand.

I will also continue to work to streamline and harmonize California's systems of accountability with those required by No Child Left Behind.

**From time to time, relations between the State Board and education stakeholders have been tense. What will you do to improve communication and collaboration between the State Board and the Legislature, education organizations, and other stakeholders on significant education policy issues?**

Improving relations requires building solid and sustainable relationships which grow out of common values and mutual trust. To create and maintain relationships capable of surviving specific disagreements requires time and effort and empathy.

To date I have reached out extensively to education stakeholders and members of the Legislature in an effort to find common ground and to understand different points of view. I have met with members of the education coalition, a variety of education-related groups, superintendents, teachers and other education leaders and representatives at county, district, and school site levels. I have listened carefully to diverse opinions and attempted to respond thoughtfully to the

issues on people's minds. Appendix A sets forth a listing of "site visits" I have made in this respect since June 2006.

I have brought an established relationship with Superintendent of Public Instruction Jack O'Connell into my position as the Governor's Secretary of Education. Superintendent O'Connell and I have worked closely on issues of accountability, intervention, and individual student identifiers among other matters. We plan to continue our positive and productive relationship to recommend and make decisions that are in the best interests of students.

**3. Do you believe there is any inherent conflict in your roles as Secretary of Education and as a member of the State Board of Education? If so, how do you reconcile the conflict?**

No. California has a unique state level governance structure with respect to matters of public education. As the Governor's Secretary of Education I serve as his chief education policy officer. An important part of my role as Secretary is to help forge consensus to overcome differences in view as well as differences in institutional role and perspective among: the Governor, the Legislature, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education, the Education Coalition, and other stakeholders in the education community.

Our state constitution purposely created a government of separated powers and leadership is required to make the system work. The role of Secretary of Education, if suitably and successfully implemented, can serve to facilitate greater access of the State Board and the Legislature to the Governor's education policies and *vice versa*. There currently exists a broad, general agreement on many issues embodied in California's standards-based reforms. The presence of the Governor's principal education advisor on the State Board enhances the potential for building constructive relationships and further broadening our consensus in a variety of education policy areas.

In short, there is no formal or legal conflict between the positions; nor do I believe that there is any inherent conflict from an institutional perspective.

**4. Your reform proposal for San Diego, the Blueprint for Student Success, sought to increase student achievement by improving the math and literacy skills of underachieving students. Did you meet the objectives you identified? Why do you believe the opposition to your proposal was so strenuous?**

Our team met the objectives established by the Board of Education and sought by the *Blueprint for Student Success* in terms of reversing a decade of stagnation in student achievement and making changes that produced significant increases in math and English language arts learning. The results were evident in test scores, as well as in classroom teaching and learning in most schools. The progress was reflected as well in the significant decrease in the number of schools in deciles 1 and 2 and a substantial increase in the number of schools in the 9<sup>th</sup> and 10<sup>th</sup> deciles



measured by California's Academic Performance Index. We saw the greatest improvements in our elementary schools, particularly in the primary grades.

Our theory of action was to improve the quality of teaching by developing a framework of skill and knowledge, involving both content and pedagogy, that teachers and educational leaders were expected to master. We accomplished this by investing hundreds of millions of dollars in professional development and training of our classroom teachers and school leaders. We had our principals, for the first time in a generation, collaborate deeply with our teachers in learning communities focused on the quality of instruction in classrooms.

In addition to the professional investment in our principals and teachers, we also recognized the importance of state-of-the-art facilities and equipment to support teaching and learning in the classroom. As such, we made an investment of \$1.5 Billion, through a bond supported by the vast majority of voters in San Diego, to modernize our long-neglected facilities, and build new schools to relieve overcrowding.

I was hired as superintendent by San Diego civic leaders because the San Diego community was not satisfied with the *status quo* in our public schools that existed in 1998. Student achievement was declining and the academic achievement gap between different ethnic and socioeconomic groups of students was growing at an alarming rate. Continuing to proceed as we had been would not produce new and different results. In order to effect change, there was significant reorganization, with substantial changes that affected adults (as well as children), in some cases adversely. The early stage of the Blueprint reform was a period of difficult personal and professional adjustment in our district as it is typically in any context of large scale change. Over time, however, opposition decreased significantly as a result of the working relationships established and the professional learning culture in evidence in the large majority of our schools.

By the end of my seven years tenure, all of our principals and the large majority of our teachers had come to understand how crucial their own learning and the district's investment in their professional development had been to broad and deep improvements in student achievement. In short, our professionals saw the results of their own learning and growth reflected in their students' work and motivation.

**Has your experience with school reform in San Diego changed your thinking about how to accomplish reform? How will it inform your actions as a State Board of Education member?**

Clarity, communication and community involvement are crucial components in any public process, particularly in the context of challenges presented by systemic education reform. Our team and I should have been clearer in beginning stages concerning expected outcomes in classroom practice and the phases of the instructional reforms that were being implemented. More time to communicate more effectively is an important "take away" lesson for me professionally as well as personally.



As described in my response to Question #2, I have concentrated a great deal on communication with stakeholders. I have met frequently with representatives from the Education Coalition and its constituent individual organizations, as well as visited schools and conferred with education leaders and practitioners throughout the state. I have also requested my staff to meet with as many stakeholders as possible. Our meetings have allowed me and my colleagues more effectively to bring the realities of working, teaching, and learning in California public schools to the attention of the Governor and to his senior staff; and reciprocally, these discussions have enabled us to present the Governor's education proposals and to receive feedback from local stakeholders. I plan to continue and expand such outreach efforts.

**6. Do you support allowing some local discretion in selecting high quality, standards-based aligned materials?**

Yes. The present process permits exercise of local choice and preference among materials on the state adopted list. I believe the State Board should examine ways to offer a broader array of materials from which LEA's can choose in order to increase discretion and customization at the local level. I am prepared also to consider other proposals regarding additional local discretion; however, any such delegation would have to take place within an assured framework that all instructional materials would remain high quality and standards-aligned. I also believe any such local discretion should be contingent on a demonstrated nexus between the materials and improved student achievement.

**7. How can the State Board facilitate, or at a minimum not hinder, local involvement in the textbook adoption process?**

The current process can be improved by taking into account more of the expertise and experience of educators at the local level. This can be accomplished by more broadly recruiting talented educators to serve on the Curriculum Commission and its affiliated panels and committees. The Curriculum Commission can provide for more systematic outreach in the course of its deliberations by holding hearings in local districts and conferring more frequently with local practitioners. Finally, the State board, acting in concert with the Department and the Superintendent of Public Instruction, might consider systematically vetting Curriculum Commission recommendations around the State in order to solicit review and comment before decisions are taken.

**8. Do you believe that the current role of the Curriculum Commission in recommending policy positions to the State Board on K-12 issues is an appropriate one? What changes would you recommend to ensure fairness and openness in the textbook adoption process?**

Under current law, the Curriculum Commission is required to recommend to the State Board of Education policies and activities to assist the department and school districts in the use of the curriculum framework and other available model curricular materials for the purpose of guiding and strengthening the quality of instruction in public schools. It is the responsibility of the State

Board of Education to adopt regulations governing public participation in the development of curriculum frameworks and the adoption of instructional materials. I believe that the State Board of Education must ensure that regulations with respect to public participation provide fully for a fair and open adoption process, and that these goals are achieved and realized in practice. Curriculum Commission recommendations must be thoroughly considered and reviewed by the State Board of Education in an atmosphere that is similarly fair and open..

**As mentioned above, the State Board is responsible for approving curriculum frameworks. How would you respond to concerns that the Reading Language Arts/English Language Development framework has not been designed in a manner to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the California High School Exit Exam? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain proficiency?**

I believe that the challenges we face in providing quality instruction and programs for our English Language Learners is the single most important issue facing our public school system; and that it is a key to narrowing and then closing the academic achievement gap. I believe that the two sides of the debate have moved closer together, perhaps more so than either side is willing to recognize. The current debate is not about Bilingual Education or English Immersion, but about how the English Language Arts materials, in English, should be connected to the needs and proficiency levels of English Language Learners. I support the idea of strengthening our English Language Arts instructional materials and programs by connecting them to the needs of English Language Learners. The English Language Arts instructional materials and lessons should provide instructional strategies and methods, in English, that account for the proficiency levels and needs of English Language Learners. In addition, we must develop a system of evaluation that measures the success of instructional strategies as applied to our English Learners so that we can replicate successful practices statewide.

**0. What efforts has the State Board taken, or should it be taking, to convince the federal government to implement more California suitable accountability measures?**

Since taking office as Secretary of Education, I have collaborated with the Superintendent of Public Instruction on fashioning an accountability proposal that “harmonizes” the federal framework with our California growth model embodied in the Academic Performance Index (API). Although this work is not yet complete, I believe that the State Board of Education should continue to support efforts in this area, consult with stakeholders, and adopt a proposal, based on these efforts, that serves the needs of our students and schools to measure student achievement while it reduces the confusion engendered by two competing visions and versions of accountability.



- 11. Superintendent O’Connell has recently been named to the federal NCLB reauthorization task force, and has stated his intent to have the use of growth model such as California’s API included in the reauthorization. In the event that fails to occur, how do you propose to address the growing number of schools in program improvement?**

Similar to our work on accountability measures, our office and I have been working with Superintendent O’Connell to develop an intervention framework concept and proposal that would consolidate our state systems -- Immediate Intervention/Underperforming Schools Program and the High Priority School Grant Program -- while remaining compatible with federal requirements under No Child Left Behind. Our focus in this work has been to (1) increase the capacity of the state to provide quality assistance, and (2) focus state resources, and available federal resources, on the schools that need the most assistance. As a result, we are developing a proposal that increases state capacity to assist schools by utilizing the expertise of other educational agencies, in particular County Offices of Education and School Assistance and Intervention Teams. Additionally, our proposal would provide for state assistance in the lowest performing schools, while requiring all other schools, subject to the intervention framework, to implement actions to increase student achievement at the local level. We believe that this work will result in a uniform intervention framework for all schools in California, and provide for a concentrated assistance effort from the State on the schools that need the most support.

- 12. Should alternatives be available to twelfth graders who are unable to pass the exit exam? If so, what options should be made available?**

I am committed to ensuring that California provides each and every student with the opportunity to obtain the highest quality education possible. To that end, I strongly support the accountability system California has worked so hard to put into place. The California High School Exit Exam (CAHSEE) remains a key component of that accountability system.

Students are furnished multiple opportunities to complete the exam successfully. Governor Schwarzenegger and the Legislature included \$20 million in the 2005-06 Budget for supplemental instruction for students who have difficulty passing the exam; double that amount has been proposed for the next fiscal and school year. This is in addition to up to \$52 Million that has been allocated and is available to assist special needs students to meet the CAHSEE requirement. I will continue to support expanded means and methods to assist students in their efforts to pass the exam. Local school boards are reviewing the issue and already have options to provide students with additional learning opportunities. High schools can provide an extra year or more of instruction and community colleges can offer additional opportunities for students to master the standards to enable them to pass the exam.

Together with the Governor and the Superintendent of Public Instruction, I cannot support alternative measures that would compromise state academic standards. Any measure developed or approved to serve as an alternative to passing the CAHSEE would have to be calibrated to equal its standards and validated satisfactorily as having done so. In short, any alternative

performance assessments would have to demonstrate credibly that they measure rigor equal to California's eight grade mathematics standards and tenth grade English Language Arts standards, the minimum standards established by CAHSEE.

**3. What actions should the State Board take to make certain that local school districts fulfill their obligation to ensure students are adequately prepared for the exit exam?**

The State Board should continue to evaluate the examination as well as continue to monitor closely its impact. In addition, the Board, working with the Superintendent, should ensure the fair and efficient allocation of resources, provided by the Legislature and the Governor, for supplemental instruction to help students who are most at risk.

Given the one year extension arranged by the Chapman case settlement and implementing legislation, we should use the opportunity to gather data about the test and instructional programs districts and schools can employ to help special needs students complete the CAHSEE successfully in greater numbers. The State Board should also continue to identify programs and practices that have demonstrated effectiveness around the state, particularly with respect to English Language Learners and special needs students.

Overall the State Board can assist by continuing to refine and enforce the state accountability system that is designed to provide all of California's children with the opportunity to obtain a quality public education.



## Outreach by Secretary of Education Alan Bersin

Attended Governor's Legislator Dinner  
 Attended University of California, Merced opening ceremonies in Merced  
 Emceed Prop 49 kickoff event w/Governor in Sacramento  
 Executive Magazine interview  
 Interview – Capitol Public Radio  
 Interview with Peter Schrag, Sacramento Bee  
 KFMB (San Diego) radio interview  
 Met with Accountability Working Group  
 Met with ACSA Executive Director and staff  
 Met with ACSA Executive Director, staff  
 Met with Agency Secretaries and Undersecretaries  
 Met with Association of Independent Colleges and Universities staff  
 Met with Butte County Superintendents in Oroville  
 Met with California Business Roundtable  
 Met with California Chamber of Commerce  
 Met with California College/University Student Leaders in Sacramento  
 Met with California Community Colleges Steering Committee  
 Met with California Congressional Delegation in Washington DC  
 Met with California High Performing Schools Staff  
 Met with California Interscholastic Federation President. Executive Board in Sacramento  
 Met with Capitol Executive Fellows  
 Met with Catholic League staff  
 Met with Chancellor, CSU in Long Beach  
 Met with CMTA staff  
 Met with Coachella School District Superintendent in Coachella  
 Met with Community College Chancellor and staff  
 Met with Contra Costa Times Editorial Board  
 Met with CPEC Executive Director and staff  
 Met with CSAC/EdFund Board, Executive Director  
 Met with CSBA Executive Director, staff  
 Met with CSU Chico State President in Chico  
 Met with CTC leadership  
 Met with CTC Stakeholders and staff  
 Met with Edison Schools staff  
 Met with Education Coalition  
 Met with El Centro, Imperial Valley Superintendents in El Centro  
 Met with Executive Director/Deputy Director, CCSESA  
 Met with Governor of Baja California and Baja Secretary of Education in Los Angeles  
 Met with Governor, Democratic Leaders  
 Met with Governor, Republican Leaders  
 Met with Governor's Advisory Committee on Education Excellence  
 Met with Humboldt County Superintendents in Eureka

Met with LA Times Education Reporters re High School Reform  
Met with Legislative Analyst's Office staff  
Met with Major Newspaper Business Editors  
Met with Mayor, Fresno  
Met with Orange County Superintendents in Anaheim  
Met with Packard Foundation  
Met with PICO California staff  
Met with Preschool for All staff  
Met with representatives of California Together in Los Angeles  
Met with Riverside County Superintendents in Riverside  
Met with Sacramento Bee Editorial Board  
Met with San Bernardino County Superintendents in San Bernardino  
Met with San Francisco Chronicle Editorial Board re Bond  
Met with San Joaquin Valley Superintendents in Merced  
Met with San Jose Mercury News Editorial Board  
Met with San Jose Mercury News Editorial Board re Bond  
Met with Santa Clara County Superintendents in San Jose  
Met with Superintendent of Public Instruction and CDE staff  
Met with Superintendent, Fresno County Office of Education  
Met with Superintendent, Fresno School District in Fresno  
Met with Tully-Senter Strong Neighborhood Initiative in Oakland  
Met with UC Berkeley Dean, School of Education in Oakland  
Met with UC Berkeley Professor  
Met with University of California President in Oakland  
Met with University of California San Diego Faculty  
Met with USDOE Deputy Secretary of Education  
Organized High Performing Schools Summit in Palo Alto  
Panel presentation re Blueprint, CSBA  
Participated in Border Governor's Conference – Torreon, Mx  
Participated in Milken Teacher Award, Einstein Middle School in Sacramento  
Participated in Obesity Summit  
Participated in Press Call re The New Teacher Project Report release  
Participated in Sallie Mae Fund News Conference  
Presentation at American Association of School Administrators Conference in San Diego  
Presentation at Children Now event  
Presentation at Civic Education Event at State Capitol  
Presentation at EdSource Conference in Pomona  
Presentation at Fordham Foundation Conference on Weighted Student Formulas in Washington  
Presentation at Hearing on WASC accreditation in Los Angeles  
Presentation to ACSA Superintendents Symposium w/Governor in Monterey  
Presentation to AICCU Conference at Loyola University  
Presentation to Beginning Teacher SA Conference in Sacramento  
Presentation to CALCP  
Presentation to California City Superintendents Conference in Burlingame

Presentation to California Dept of Education Conference on English Language Learners in Anaheim  
Presentation to CASBO Bootcamp in Sacramento  
Presentation to CCSESA Executive Committee  
Presentation to Charter Schools Association in Sacramento  
Presentation to Community Colleges Board of Governors  
Presentation to Conference on Hechinger Institute on Union Issues and the Media in Denver  
Presentation to CSBA Delegate Assembly in San Diego  
Presentation to CSBA Superintendents Meeting in Sacramento  
Presentation to CSBA Urban Superintendents  
Presentation to Education Summit, Mills College in Oakland  
Presentation to Hewlett Foundation Grantees Conference in Palo Alto  
Presentation to Humboldt County Trustees Dinner in Eureka  
Presentation to Koret Task Force – Hoover Institute in Palo Alto  
Presentation to Los Angeles Chamber of Commerce  
Presentation to National Alternative Certification Association Conference in San Diego  
Presentation to National Authorizers of Charter Schools Conference in Denver  
Presentation to Sacramento Press Club  
Presentation to San Diego Community Colleges Association Trustees in San Diego  
Presentation to Santa Ana Chamber of Commerce  
Presentation to School Services Conference  
Presentation to School Services Conference in Long Beach  
Presentation to Senate Committee Hearing on Smart Growth Plan  
Presentation to Silicon Valley Leadership Board of Directors in Mountain View  
Presentation to Tuolumne County Superintendents/Community Luncheon in Sonora  
Presentation to UCLA Leadership Group in Los Angeles  
Presentation to UCLA School of Education Faculty in Los Angeles  
Presentation to US Council of Mayors in Long Beach  
San Francisco Chronicle interview  
School Visits in San Diego, San Ysidro, Palo Alto, Monterey, Sonoma, Oroville, Coachella, El Centro, Los Angeles, Eureka  
Taped greetings for Rural Districts Summit for Assemblymember Cogdill



**STATE BOARD OF EDUCATION – CONFIRMATION HEARING**  
**Wednesday, March 29, 2006, 1:30 p.m. (State Capitol, Room 113)**

**1. What do you hope to accomplish as a member of the State Board of Education?**

It is my mission to close the achievement gap and assure that all students in California receive an effective education. As a public school principal who serves 1,800 students (PK-12<sup>th</sup>) who live in a high-poverty neighborhood of Los Angeles (100% of the students are eligible for free/reduced meals, 87% of the students are English learners), I recognize the urgency of providing maximum learning opportunities to students with significant needs. As a first generation immigrant who came to this country at age 17 with no resources and have captured the American Dream, I also recognize that success is attainable and it is my responsibility to make it a reality for the students of California.

I will work with the Legislature, State Superintendent of Public Instruction, school districts, education organizations and other stakeholder groups to develop and implement policies in the following areas:

- More intensive and high-quality training for principals and teachers.
- Increased flexibility to expedite deployment of resources including the blending of services (e.g. Title 1, programs for English learners, special education, etc.).
- Refining and updating current standards, frameworks and assessment processes to meet the diverse and changing needs of students.
- Inclusion of global education to increase employability of our youth.
- Examination of certain Education Code which triggers ongoing requests of waivers and hampers school instruction and operation.
- Hold local districts accountable for student achievement.

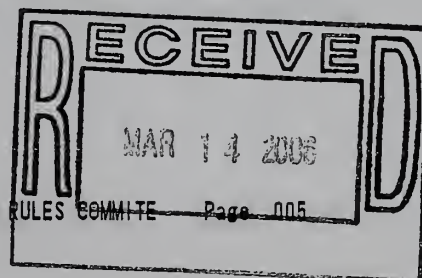
**2. From time to time, relations between the State Board and education stakeholders have been tense. What will you do to improve communication and collaboration between the State Board and the Legislature, education organizations, and other stakeholders on significant education policy issues?**

I believe that it is healthy to have diverse opinions. In fact, it can be an asset to problem solving. I also believe that every adult wants students to succeed; therefore, I will build consensus among adults and groups by focusing on shared goals. Consensus building can include the following:

- Take time and efforts to understand the issues and various points of view (including talking to diverse groups, visiting schools, communicate with students and parents, etc.).
- Stay abreast of legislative bills, educational initiatives, the work of the California Department of Education and efforts from the Governor's Office.
- Ask the right questions; then listen, reflect, and gather diverse responses to the questions.
- Bring stakeholder groups together to create options, priorities, and trial steps.
- Make contribution to problem solving by utilizing my skills in special education, instruction of English learners, charter school operation, school construction, teacher and principal training, nutrition education and educational technology.
- Help stakeholder groups build long term relationship and ongoing connections.
- Assume the role of a convener; take leadership role when needed.

3/6/2006

1 of 85





Confirmation Hearing by Senate Rules Committee : Responses to Confirmation Questions  
Yvonne Chan – California State Board of Education

108

**3. Do you support allowing some local discretion in selecting high quality, standards-aligned materials?**

Yes. I believe in flexibility. As a principal of a conversion charter school, I do believe in local discretion. With high stake consequences, local districts and schools would want the best, the highest quality, standards-aligned materials for their students. In addition, local entities know their students the best. I would encourage local entities to start selecting high quality supplemental materials such as trade books and technical manuals, reference materials, and instructional media materials.

Once local entities have experience in material selection, the California State Department of Education (CDE) can provide technical assistance in developing a long term material selection plan. Local entities with similar needs can join force to create review panels and review criteria with the guidance from CDE staff. Statewide adoption can rely on input and feedback from these local panels.

**4. How can the State Board facilitate, or at a minimum not hinder, local involvement in the textbook adoption process?**

State Board can facilitate local involvement by doing the following:

- Develop textbook review rubrics based on a wide range of local input.
- Host regional public hearing and discussion forums in different parts of the state.
- Form local network of experts in textbook review.
- Organize online feedback and chat sessions.
- Encourage piloting of new curricular materials.

**5. Do you believe that the current role of the Curriculum Commission in recommending policy positions to the State Board on K-12 issues is an appropriate one? What changes would you recommend to ensure fairness and openness in the textbook adoption process?**

Current regulation designates the Curriculum Commission as the entity that provides the State Board with textbook adoption recommendations. State Board must make sure that recommendations are made solely based on quality and alignment with standards, and not policy position maintained by certain members of the Commission. To ensure fairness and openness, the Board should do the following:

- Be more proactive and involved in the appointments of members of the Curriculum Commission and various advisory panels; assure that each group is composed of professionals of diverse experiences and points of view.
- Be familiar with various ideological points of view and open to dialog with experts in the field including members of organizations, publishers and researchers.
- Provide more public hearing opportunities.
- Direct review panels and Curriculum Commission to provide feedback and clear suggestions to publishers for corrections.
- Have publishers make edits and corrections in a timely manner.
- Establish clear appeal procedures for materials not recommended.

3/6/2006

2 of 65

Confirmation Hearing by Senate Rules Committee : Responses to Confirmation Questions  
Yvonne Chan – California State Board of Education

109

- 6. As mentioned above, the State Board is responsible for approving curriculum frameworks. How would you respond to concerns that the Reading Language Arts/English Language Development framework has not been designed in a manner to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the CAHSEE? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain proficiency?**

The appointed Reading/Language Arts & English Language Development Framework panel and Department staff should meet with groups that are expressing concerns. SBE members should seek recommendations from more experts in the field of English Language Development, especially those who will be utilizing the Framework in schools. Prior to adoption, SBE should coordinate additional public hearing sessions and request edits, additions and addendum to the Framework. Specific attention must be given to the following areas:

- Augmentation of literacy instruction at early age.
- Implementation of primary language instruction with appropriate resources designed to meet same language arts standards (including primary languages that are alphabetic and non-alphabetic).
- Extensive development of concepts and vocabulary using materials appropriate for the diverse cultures.
- Explicit writing instruction to enable English learners to write cohesive and coherent text.
- Carefully sequenced instructional materials.

All students need rigorous and appropriate instructional materials to attain English/Language Arts proficiency, including the English learners. Instructional materials must address the English/Language Arts standards as well as the English Language Development standards. Materials for English learners (at various CELDT and English proficiency levels) must be well integrated into the basic English/Language Arts Program. Additional instructional time provided to English learners must be accompanied by coherent and high quality materials as well as instructional delivery methods. The State Board must make sure that the adopted Framework provides clear direction to publishers. Essential elements for the publishers to include are:

- Decodable texts containing the phonics elements with which students are familiar
- Maximum opportunities to practice English speaking skills by given oral presentations assisted by visual aids.
- Sufficient examples of vocabulary usage, repetitions of unfamiliar words embedded in texts of appropriate length, readability and syntactical complexity.
- Adequate writing models (including development of coherent text and narrative plot, switches between tenses, use of transitional phrases)
- Content-rich texts as means for teaching English language conventions (grammar, usage, spelling, capitalization, punctuation)
- Source materials written at a readable level; increase use of quality trade books; selected websites and online references
- Sufficient number of examples of the genres targeted at each grade level
- Detailed instruction and examples for research report writing, use of media support
- Inclusion of many "ready-to-go" items for additional practice and independent activities

3/6/2006

3 of 5



Confirmation Hearing by Senate Rules Committee : Responses to Confirmation Questions  
Yvonne Chan – California State Board of Education

- Emphasis on academic language and advanced academic vocabulary needed to access other content areas (e.g. signify, denote, comprise, mention, further argue, etc.)
- Assessment tasks corresponding to the range of materials and standards addressed

**7. What efforts has the State Board taken, or should it be taking, to convince the federal government to implement more Ca. suitable accountability measures?**

California continues to negotiate with the federal government to implement a growth model using the Academic Performance Index (A.P.I.). Last year, State Superintendent O'Connell and State Board President Mrs. Ruth Green met with federal officials to seek flexibility in calculating the number of schools in program improvement. The State Board has also received assistance from the Hewlett Foundation to complete a statistical model that would align our API system with the federal Adequate Yearly Progress System (AYP). The State Board has also filed with the federal government its acceptance of the new flexibility provided in calculating progress of special education students (from 1% to 3% of students who are eligible for alternate assessment). On April 1, 2006, the California State Department of Education will be filing an amendment with the federal government requesting changes to the California Accountability Workbook. These changes would bring the API system in line with the aspirations of the No Child Left Behind Act. In particular, this proposal will address the persistent and pernicious gap in achievement between traditionally higher scoring and lower scoring student subgroups.

In the meantime, I feel that California needs to take the following steps;

- Refine and/or redefine our current growth model by tracking individual student progress using a longitudinal student achievement data system.
- Align our system with the federal system by defining grade span, adding subgroups and recalculate assessment weights.
- Review and learn from other states (e.g. South Carolina, the first state to gain final approval from the U.S. Department of Education for its student assessments under the federal No Child Left Behind Act)
- Provide input in the reauthorization of NCLB and advocate for appropriate change

**8. Superintendent O'Connell has recently been named to the federal NCLB reauthorization task force, and has stated his intent to have the use of growth models such as CA's API included in the reauthorization. In the event that fails to occur, how do you propose to address the growing number of schools in program improvement?**

Again, California should continue to enhance and refine our growth model by track individual student growth (using a unique student identifier) and not a different cohort of students who move through the grades. We must also direct contractors to provide better data analysis reports to schools and districts.

In the event the use of California's growth model fails to be approved by the federal government, California must reassess the way it defines proficiency especially for certain subgroups. This includes the assignment of different weights to different proficiency levels. In addition, the State Board and the Department of Education must take a major role in helping school districts and schools to improve which goes beyond improvement planning only. Technical assistance should

3/6/2006

4 of 5

Confirmation Hearing by Senate Rules Committee : Responses to Confirmation Questions  
Yvonne Chan – California State Board of Education

111

also include assistance in curriculum and instruction, data and assessment, leadership and governance, parent and community improvement.

**9. Should alternatives be available to 12<sup>th</sup> graders who are unable to pass the exit exam?  
If so, what options should be made available?**

The current federal law specifies who are eligible for alternative assessment (e.g. English learners, students with disabilities) and I believe we should follow the law. Alternative assessment tools may include locally-devised high quality or standards-aligned performance tasks, end of course exam, and exam in primary language. Developing, pilot testing and adopting valid alternative assessment tools is a long process. Immediate solutions should include the following:

- Provide intensive tutoring, especially in mathematics.
- Encourage districts to use appropriate accommodation or modification for students with disabilities.
- Examine the waiver process and waiver possibilities.
- High school and community college dual enrollment in English and math.
- Additional opportunities to take the exit exam.
- Provide students with certificate of completion.

California, New York, Nebraska, Indiana, and Wyoming are the only five states that are moving to anchor their high school standards in the skills needed for college and work. California, Texas, Colorado, Illinois, Maine, and Missouri are the only six states that have state high school tests that are now used for college-admissions or placement decisions. Unfortunately, the expectation gap cannot be closed by high schools alone. I recommend the formation of a special council that brings together policymakers from PK through postsecondary education to address student achievement and successful high school completion.

**10. What actions should the State Board take to make certain that local school districts fulfill their obligation to ensure students are adequately prepared for the exit exam?**

State Board of Education and the Department of Education must hold districts accountable and ensure their students are adequately prepared for the high school exit exam. Monitoring should include the following:

- Ensure local school districts provide high quality and intensive supplemental instruction.
- Redirect resources to improve program quality and not just quantity.
- Ensure highly quality teachers are teaching these students, including the deployment of National Board Certified teachers
- Provide practice, feedback and individualized diagnosis of problems with ongoing assessment and feedback; use study guides for preparation and remediation.
- Strengthen Regional Occupation Program where some students have enrolled to ensure learning standards are embedded into the program.
- Better coordination and/or articulation between staff of general education, special education and those with expertise working with English learners
- Provide appropriate test accommodation or modification to students with disabilities.
- Make sure students take multiple testing opportunities.
- Provide a mentor for each student who has not yet passed the exit exam beginning in Grade 11.

3/6/2006

5 of 6-5





**GOALS, ROLES, AND RESPONSIBILITIES**

**1. What would you hope to accomplish as a member of the State Board of Education?**

I intend to maintain pressure on the board to establish policies to ensure that all students have the opportunity to become academically proficient in the California State Standards. I will urge the board to ensure that local school districts are provided flexibility in the operation of state-directed programs. I will work with the Legislature, the Department of Education, and the board to develop standards that will provide teachers and students the opportunity to explore a broad range of subjects, including career-technical instruction.

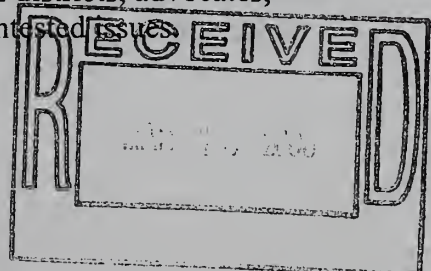
It is further my goal as a board member to assist with the reform of public education to ensure that all students, especially poor and minority students, have equal access to the same high standards established for all students and equal "success", since access is itself not enough. Poor and minority students do not progress poorly because they are poor or minorities; they perform poorly because we, those in public education, do not teach them well. The State Board of Education has an obligation to require educational success for all of California's students and to hold public schools accountable for results.

I am committed, as a State Board Member, to press staff and the board to act on behalf of all students, especially those who in the past have been neglected and underserved. In my thirty-nine years in public education, I have served almost exclusively in school districts serving poor, minority, and underserved students.

**2. From time to time, relations between the State Board and education stakeholders have been tense. What will you do to improve communication and collaboration between the State Board and the Legislature, education organizations, and other stakeholders on significant education policy issues?**

I am committed to broadening communication with all interests between board meetings before issues are brought to the board for final action. Specifically, I will encourage CDE and SBE staff to spend more time engaging stakeholder groups, legislators, and their staff on draft proposals before they are submitted to the board for action. I want to be sure that there is sufficient input before the board is asked to vote. To this end, I will commit to do the following as far as I am able:

- I will listen to all parties, including parents and student advocates, in order to gain a broad understanding of their concerns.
- I will actively seek input from legislators and their staff, school districts, advocates, agencies, and organizations regarding potential solutions to contested issues.



I will seek assistance of CDE and SBE staff to develop potential solutions for inclusion in recommendations to be brought to the board on its agenda for action.

114

As a board member, I would like to personally engage legislators in review of significant educational issues on a regular basis by meeting with individual legislators, specific education policy committees, committee chairs, and other policy makers. I believe that it is important for State Board Members to develop a relationship with interested members of the Legislature and engage in an ongoing dialogue on such critical issues as No Child Left Behind, the State School Accountability Program, the STAR program, CAHSEE, charter schools, textbook adoptions, and other matters of importance.

In twenty-eight years as a successful school superintendent, I have made certain that the school board I served had the best information available in order to make the best possible decisions. I will make every effort to assist the CDE and SBE staff to do the same for the State Board of Education.

## **INSTRUCTIONAL MATERIALS**

### **3. Do you support allowing some local discretion in selecting high quality, standards-aligned materials?**

As a State Board Member who is actively involved in a public school district as superintendent of schools, I am a strong advocate for local control. I also support a rigorous review of instructional materials to determine appropriateness, alignment to state standards, accuracy, and screening for offensive content. The State Board, constitutionally charged with the adoption and provision of K-8 instructional materials for all public school students, must ensure that teachers and students are provided with the highest-quality instructional materials. The board should regularly review the state's procedures for textbook-materials selection in order to assure that the greatest numbers of publishers are encouraged to submit for K-8 adoptions. The current low number of publisher submissions should be a matter of great concern to the board. The board must also be concerned that the state's adoption process may be forcing small publishers of high-quality materials out of the process. The higher the number of high-quality textbooks and materials submitted for adoption, the greater is the flexibility provided to schools and teachers. One example of an improvement in this area would be an increase of textbooks and materials and thereby flexibility for teachers of English Learners.

The board must also consider the development of a list of successful textbooks that meet all of the state's quality requirements for continued use that are the product of prior adoptions. It makes no sense to disallow the purchase and use of successful materials that have assisted their schools to raise their achievement levels only because they belong to a prior adoption. Such a list of approved materials would save money and reduce the amount of time devoted to staff development required for new adoptions.



**4. How can the State Board facilitate, or at a minimum not hinder, local involvement in the textbook adoption process?**

115

The State Board could do several specific things that would enhance local involvement in textbook adoption, such as:

- Develop a list of successful textbooks that have helped schools increase student achievement levels that also meet all current requirements for textbooks and allow them to be used on a continuing basis, even after adoption of a new cycle of materials. It makes no sense to disqualify successful materials from a prior adoption if they have a proven track record. This list would also save textbook money and minimize the amount of staff development that would ordinarily be necessary for a new adoption.
- The State Board also needs to be more flexible in granting waivers to petitioning districts where the textbooks of materials have developed a good track record. The board should consider multi-year waivers where appropriate.
- The State Board might generate a formal feedback process from the field whereby teachers could weigh in on the quality of the board's adoptions.

**5. Do you believe that the current role of the Curriculum Commission in recommending policy positions to the State Board on K-12 issues is an appropriate one? What changes would you recommend to ensure fairness and openness in the textbook adoption process?**

I support the role of the Curriculum Commission overall in the process implemented to develop K-12 Curriculum Frameworks and recommendation of Textbooks and Instructional Materials to the State Board for adoption; however, in my brief opportunity to observe the process there are some changes I would suggest.

First, all meetings of commissioners, including the orientation meetings for new commissioners, seem to be closed to the public. Some interest groups have complained that the orientations for new commissioners are closed to the public so that the training provided to commissioners by the CDE cannot be observed by the public. Such a change might be uncomfortable for some commissioners who are new to the process but such a change would minimize suspicion by some members of the public of bias in the training.

Second, modify the regulations governing the operation of the commission as necessary to make certain that the process is inclusive of all interests. Timelines and protocols notwithstanding, interested parties should have ample opportunity to be heard and have their recommendations acknowledged.

In cases where the Commission does not recommend adoption of a specific publisher's submission, I would feel obligated to know why before voting. That might include conversations with publishers, authors, subject matter experts, and teachers in the field. The publishing industry is a high-stakes enterprise. When a publisher's submission is not recommended, it can have a significant effect on that publisher as well as others.



6. **As mentioned above, the State Board is responsible for approving curriculum frameworks. How would you respond to concerns that the Reading Language Arts/English Language Development framework has not been designed in a manner to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the California High School Exit Exam? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain proficiency?**

The current RLA/ELD K-12 Curriculum Framework is nationally recognized for high-quality expectations and curriculum guidance. Public schools in California have made great progress in academic achievement in Reading/Language Arts, particularly in the elementary grades. I respect the work from which these standards have emerged; however, I support stronger English Language Development components as part of the evaluation criteria, which would guide publishers in the development of new and improved K-8 textbooks. The State Board must do more in this area. I am committed to making certain that any proposed programs or published materials we consider for adoption include the strongest ELD materials possible. Any approvals of frameworks by the State Board must inform and guide publishers in the development of high-quality materials for use in classrooms for English Learners. The current number of materials available is meager, limiting the flexibility of teachers of English Learners.

While I am open to any reasonable approach to development of high-quality materials for English Learners, I am generally cautious about any approach that might separate ELs from the mainstream of students in their schools; however, at this time, the SBE is studying the issue of separate programs for English Learners and my intention is to hear all points of view and make a decision based on what is best for English Learner students. Many past attempts by government entities to separate some students out for special treatment have resulted in one form or other of discrimination and different, and often lowered, expectations of these students. I favor a broad range of quality materials that are clear and specific in their direction to teachers to minimize the need for them to use multiple texts and materials. The process needs to be simpler for teachers, rather than complex. The State Board should produce blueprints and frameworks that encourage publishers to develop materials that are clear, specific, and inclusive for teacher and student use.

## **NO CHILD LEFT BEHIND ACT**

7. **What effort has the State Board taken, or should it be taking, to convince the federal government to implement more California suitable accountability measures?**

The federal government did approve the State of California petition for the purposes of NCLB only to allow English Learners to remain in an EL subgroup until each student gains "proficiency" on the CST's for three years in a row. This will allow California to demonstrate growth within the EL subgroups. This represents some progress, which the State Board supports; however, what NCLB does not account for is the fact that by the very nature of the EL subgroup, EL students will always be "nonproficient" in English. The purpose of this subgroup is to work towards language proficiency. This is not an easy issue.

I believe it will require continuous dialogue between California, other states with high numbers of EL students, and the USDOE, with a strong emphasis on moving the federal government to recognize the growth EL students and all subgroups can make based on the state's API. I will support this as a member of the State Board.

The State Board, in conjunction with the Superintendent O'Connell and the Governor's office, has strongly advocated for the use of the API for the purposes of meeting the Adequate Yearly Progress (AYP) goals. The state has made it clear to the federal government that it is open to modifying the API to meet NCLB goals. The State Board's March agenda includes action on this issue. I am confident that, eventually, the USDOE will recognize the state's API system.

- 8. Superintendent O'Connell has recently been named to the federal NCLB reauthorization task force, and has stated his intent to have the use of growth models such as California's API included in the reauthorization. In the event that fails to occur, how do you propose to address the growing number of schools in program improvement?**

Unless there is recognition of ongoing student academic growth, NCLB risks losing credibility and of becoming irrelevant as a respected accountability measure. This would not be a good thing as I believe in the principles of NCLB. If the number of schools and school districts that are predicted to become Program Improvement schools (PI schools is accurate), it will become difficult for the state to know which schools and districts require the most assistance. Therefore, I believe it imperative that the State Board approve a system whereby the schools and the school districts in Program Improvement can be identified by severity of need for assistance. This would enable the State Board and the CDE to focus attention on those that need the most help. It will become imperative to provide the most significant and immediate attention to those school districts with the highest number of PI school.

## **HIGH SCHOOL EXIT EXAM**

- 9. Should alternatives be available to twelfth graders who are unable to pass the exit exam? If so, what options should be made available?**

The State Board must make certain that students who have not passed the exit exam have greater access to completion of the test than they do now. I support increasing the number of opportunities for students to take the exit exam, including the reinstatement of the summer administration of the test. Thus schools could tie remediation classes to another opportunity to complete the exam for those who fail it in the spring. I also favor giving seniors more opportunities to pass the test and to have the test administered in smaller sections over a longer period of time. Turn-around time for reporting of test results is too slow to be helpful, especially to seniors. I favor basing the letting of testing contracts to be granted, at least in part, on how quickly test results can be reported back to the school and the student. The turn-around time should be no less the two weeks for an effective intervention to be administered. I will support these changes, and I will support effort of the Legislature and Governor to fund them.

**10. What actions should the State Board take to make certain that local school districts fulfill their obligation to ensure students are adequately prepared for the exit exam?**

118

The State Board should use the data and research from the HUMRO reports as a guide for developing action plans or directions to insure that local school districts fulfill their obligations to their students. The State Board must advocate and support action by the Legislature and the Governor for continuous funding to support intervention and remediation opportunities for students. As a State Board Member, I will advocate for more opportunities for students to complete the test successfully, to include summer and Saturday instruction, and administration of the exam at every GED and Adult Education Center in the state.



March 31, 2006

Honorable Don Perata, Chair  
Honorable Jim Bartin, Vice Chair  
SENATE RULES COMMITTEE  
CALIFORNIA LEGISLATURE

Dear Rules Committee:

Thank you for your consideration of my appointment to the California Boating and Waterways Commission. I am submitting this letter to provide you a review of my goals for my term as a Commissioner should I be fortunate enough to receive your confirmation. I consider my service on the Commission as a tremendous opportunity and a significant responsibility.

The Commission is chartered to advise the Department of Boating & Waterways on all of its activities and to review and approve all of the Department's grants and loans. I would like to champion projects that provide access to the state's waterways; especially for those Californian's living in areas that have few access options. I would like to follow a loan and grant plan that allocates support to marinas, launch areas, docks and facilities so that they are safe and beautiful places for the recreational boater and the community at large to enjoy. Examples of this are the project the Commission approved for the City of Martinez and the project currently underway with the Berkeley Marina. Both of these marinas in being retrofitted are becoming beautiful, safe, clean and modern and I believe they will be a testament of the state of California's commitment to the recreational boater and the community. I also believe that these loans and grants can and should help provide an economic stimulus to local communities. An example of this is the project the Commission approved for the City of Long Beach's Rainbow Harbor.

More of a long term goal of mine is to grow the working relationship the Commission and I have with the Department staff, further understanding the Department of Boating and Waterway's goals and objectives in administering the various programs in its' portfolio. I would like to place special interest on and provide advice to the Department staff in the area of clean environmental practices and procedures - something in conjunction with Commission Chairman Purdon and his "Clean Marinas" project.

My wife and I have a son, now just turning two year old, and we both look forward to watching him learn to sail in the Newport Harbor - just as his mother did 30 + years ago. That is an awesome legacy that our state provides - the chance for multiple generations to sail and enjoy the same beautiful seascape. As a Commissioner of Boating and Waterways for the State of California I look forward to the opportunity to help ensure that all Californian's have now, and into the distant future, the same opportunity to enjoy California's waterways. I hope I am fortunate enough to obtain your consent.

Sincerely,



Edward C. Reno III

APR - 9 2006





**KNUTE MICHAEL MILLER**  
**71 MAGELLAN AVENUE**  
**SAN FRANCISCO, CALIFORNIA 94116**  
**(415) 566-1953**  
**KMIKE.MILLER@SBCGLOBAL.NET**

April 6, 2006

The Honorable Don Perata  
Chairman, Senate Rules Committee  
California Legislature  
State Capitol, Room 420  
Sacramento, California 95814-4900

Re: Confirmation Hearing: Appointment to Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Hearing Date: April 19, 2006)

Dear Mr. Chairman:

In response to your letter dated March 22, 2006, and to assist the members of the Senate Rules Committee relative to its hearing to consider my confirmation as a commissioner and member of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun, I respectfully provide the following:

The Pilot Commission licenses and regulates some 60 pilots who ensure the safe navigation of ships – many of which are longer than the Transamerica Building is tall – from sea to berth, throughout the waters within the Board's jurisdiction, and back to sea. These waters (which also include Sacramento, Stockton and Monterey Bay) are considered to be among the most challenging and environmentally sensitive pilotage grounds in the United States. In recent years, the number of such ship movements has risen to 8,500 annually with no significant casualties or harm to the environment. Commercial ship traffic to and from the Bay Area, and the jobs related to the transfer of cargo and passengers, has played a significant role in the regional and state economy.

The Board has been able to maintain its focus on safety as its number one priority – ensuring that safety remains the pilots' priority in carrying out their duties, and ensuring the personal safety and well being of the pilots themselves. This focus is instilled and reinforced throughout the Board's selection and training of pilot trainees, its training programs of serving pilots, its periodic review of the number of pilots needed to ensure the availability of a rested pilot for each assignment, and its investigation of piloting incidents.

The Honorable Don Perata  
April 6, 2006  
Page 2

While the Board's primary purpose is to regulate pilots, it is also authorized to investigate reports of pilot ladder safety violations. Recent incidents in Oregon and Hawaii in which pilots lost their lives while disembarking from ships they had guided to sea have raised the public's awareness of the risks pilots take each day in order to guide water-borne traffic safely through the treacherous waters commonly found at harbors' entrances. Pilots depend on properly placed and well-maintained ladders to embark and disembark ships in the offshore, open sea environment. The Board's proactive role and close cooperation with the U.S. Coast Guard has been instrumental in encouraging ship owners to make safe pilot transfer arrangements a high priority.

The Board's role in setting pilotage rates and periodically reviewing expenses related to providing pilotage services is no less important. The maritime industry, the public and the pilots rely on the Board's active participation and vigilance to ensure that the rates will attract and hold the most competent pilots, providing them a fair return for their investment, while ensuring that local ports and ship operators can remain competitive with other ports.

My goal is to help keep the Board on the course that has been set by the able members of current and past commissions. Progress that has been made to date can rapidly erode if future Board members do not remain vigilant. I look forward to doing my part to ensure that the Board's focus will continue to remain on safety in piloting, the personal safety of pilots, and fiscal responsibility in the providing of pilotage services.

Please let me know if I can answer any questions or provide further input on any areas of concern to the Committee.

Very truly yours,

A handwritten signature in cursive script, reading "Mike Müller", followed by a horizontal line extending to the right.

Michael Sitts  
Goals

I want to continue to promote maritime safety and the protection of the marine environment. To achieve these goals I would hope to work with the IMO (UN) and other regulatory bodies, both regional and national, support the development of international conventions and regulations that enhance the safe construction and operation of marine vessels and terminals; support the global implementation and enforcement of such international conventions and regulations; and encourage industry-wide acceptance of established safety and environmental guidelines and recommendations. Also, I would like to continue to be an advocate for issues relating to the safe operation of tankers and prevention of pollution of the marine environment.

Current strategies to achieve these goals:


- 1) Board Member of the Board of Pilot Commissioners for the Bays of San Francisco
- 2) Manager for the International Mooring Master Group and Marine Consultant for Chevron Shipping Company LLC
- 3) Chairman of Ship to Ship Transfer Working group, Ports and Terminals Committee, OCIMF (Oil Companies International Marine Forum)

Regards,

Mike Sitts  
Capt. Michael B. Sitts  
Chevron Shipping Company LLC  
Marine Upstream Operations Group  
office: 925-790-6839  
fax: 925-790-6690



**TO:** Senate Rules Committee

**FROM:** Larry Goldzband 

**DATE:** March 24, 2006

**RE:** San Francisco Bay Conservation and Development Commission (BCDC)

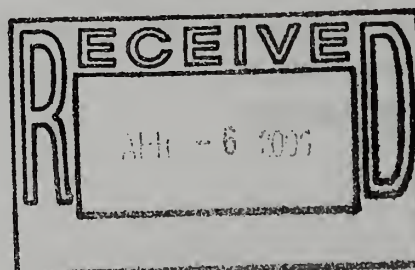
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Thank you very much for the opportunity to outline my short- and long-term goals for the Commission prior to my confirmation hearing. Having been a member of BCDC both as a gubernatorial appointee and as the representative of The Resources Agency, I am familiar with the Commission's history and authorizing legislation. BCDC's strategic plan is well thought-out, and my understanding is that its implementation has enabled the Commission to become even more focused and results-oriented. Just as important, BCDC is an integral member of the Bay Area planning community; the recent agreement between conservation and development concerns regarding BCDC's processes demonstrates both the strong role that BCDC must play to ensure the health of the Bay and its need to understand and work closely with private sector interests that provide much of the Bay Area's economic growth.

I have two major goals as a Commission member. My long-term goal is to ensure that BCDC takes no action that would diminish the esteem it has earned both historically and recently from members of the environmental, planning, and development communities. BCDC's permitting authority and jurisdiction must be respected by all parties that have an interest in the Bay's health and the Bay Area's economy; its decision-making processes must result in policies that command the respect of all parties with a stake in the outcome, even those who disagree with that outcome. Commission staff must continue to recognize the need to be accessible and respectful of those who need to use the permitting process.

Second, as a new member of the Commission's Enforcement Committee, my short-term goal is to learn a great deal very quickly about how BCDC enforces its policies and to promote change, if necessary. Enforcement must remain a very high priority despite current budget circumstances; as a former regulator in the Executive Branch, I understand the inherent difficulties that arise when an organization sends "mixed signals" about its policies, and we must ensure that BCDC does not fall into that trap. Above all, BCDC must be viewed as "fair" in its dealings with the public, which places a heavy burden on the Commission's enforcement proceedings.

Please do not hesitate to contact me with any questions you may have, and I look forward to working with the Legislature on issues of mutual concern.



Colleen Jordan  
Appointed May 2005  
San Francisco Bay Conservation and Development Commission

#### Statement of Goals

There is a natural and obvious drive by property owners to develop to the highest economic benefit. It is my goal on the BCDC to help balance that drive with a parallel drive to enhance the beauty and health of the bay, without which most bay-side developments would lose their appeal.

It is that win-win approach that spawns these goals:

- To enhance the public's access to and enjoyment and use of areas contiguous to the beautiful San Francisco Bay.
- To encourage application procedures that will motivate developers to pro-actively incorporate exceptional conservation and public access components to their projects.
- To increase opportunities for habitat for unique, native and transitory San Francisco bay bird life.

It is through these objectives that we will engage the public in cooperative and enthusiastic support for conservation, making our home a more appealing one in which to live.



Building San Francisco Bay from the Inside Out

March 16, 2006

Honorable Don Perata, Chairman  
Senate Rules Committee  
State Capitol, Rm 420  
Sacramento, CA 95814-4900

Re: Confirmation Hearing, April 19, 2006

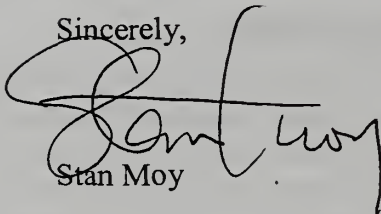
Dear Senator Perata:

Per your March 10, 2006 request, I outline my goals for the Commission in the coming years.

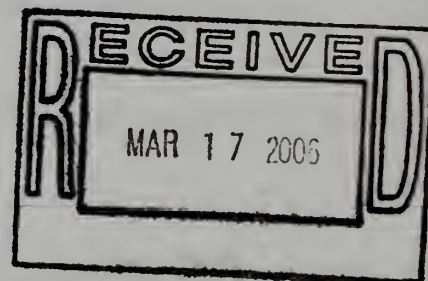
For the short term, I bring forth 35 years of professional design experience, 25 years as a business owner, and 23 continuous years of service on boards and commissions to the duties required of me on BCDC. This includes attendance and active participation at Board and Committee meetings, and to provide advice and guidance for continuing the important mandate of the Commission.

My long term view is to be an active participant in the dynamic nature of conservation and development of the San Francisco Bay as the region experiences changes and growth in population and economics. BCDC is fortunate to have a clear mandate, well written guidelines to work with, and a successful 40 year track record. I understand this. I am excited, as well as honored to be in this position.

Sincerely,



Stan Moy





**R. Sean Randolph**  
**San Francisco Bay Conservation and Development Commission**  
**Senate Rules Committee**  
**April 19, 2006**

I greatly appreciate the Governor's confidence in nominating me to serve as chairman of the San Francisco Bay Conservation and Development Commission (BCDC), and the willingness of the Senate Rules Committee to consider my confirmation.

As a native Californian and resident of the Bay Area since 1988, the Bay has assumed a major importance in my perspective on the region and its physical and economic future. As president & CEO of the Bay Area Economic Forum since 1998, I have had the opportunity to be involved in many activities relating to the Bay and its role in the economy of the region, including international trade and development at the Port of Oakland, and the Bay Area Water Transit Initiative, which led to the creation of the Bay Area Water Transit Authority. This has strengthened my appreciation for the Bay's role as a link between communities and as an economic asset that literally defines the region.

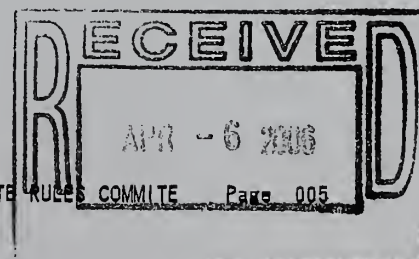
At the same time, as an ocean kayaker I have frequently spent early mornings on Bay, watching the sun come up, afternoons off Angel Island, or evenings on the water by moonlight. On good days, when I can leave the car at home. I am privileged to commute from Marin County to San Francisco by ferry, and to see ships, sailboats, seals, fog, seabirds, seals, herring boats, and whales. I am always struck by the Bay's natural beauty, even as it is surrounded by a major metropolitan area.

These two perspectives are at the heart of BCDC's purpose: the protection and preservation of San Francisco Bay as a unique natural resource, and economic development that is consistent with sound environmental stewardship. In its forty year history BCDC has successfully and effectively fulfilled that role, increasing wetlands and expanding bayside parks and public access, while facilitating vital economic activity such as port and waterfront development.

If confirmed as chairman I have several goals for the Commission. One is to continue the balanced role BCDC has played in facilitating both environmental protection and economic growth, bearing in mind the Commission's core mission of assuring the integrity of the Bay. As a second goal, I want to assure that the Commission operates with maximum efficiency in its permitting processes; enforcement actions, where necessary, should be timely as well. As staff cutbacks since the onset of the state's budget crisis have impaired the Commission's capacity, I want to ensure over time that it has the resources necessary to effectively fulfill these functions.

Finally, as a one-time student in architecture and urban design, I have a particular interest in the Commission's Design Review activity as it relates to proposed waterfront projects, and how BCDC's role can be used to help produce an even more attractive, interesting and publicly accessible waterfront in diverse parts of the region. I believe that an opportunity exists for the Commission to play an even more positive and active role in the continued revitalization and historic preservation of San Francisco's waterfront.

I appreciate the Committee's consideration of my nomination.





**Al Young 1662 Oxford Street Berkeley, CA 94709 USA**

510.981.332 | 510.981.0545 Fax | alyoung@alyoung.org

The Honorable Lon Perata  
State Capitol  
Room 420  
Sacramento, CA 95814-4900

Dear Mr. Perata,  
and Members of the Senate Rules Committee:

In the short term, I will carry out my duty as California's Poet Laureate; that is, make myself fully available to serve and be present at six official venues. In the long term, I see it as my duty to remind citizens of the Golden State of the importance of poetry in our lives. Reading, hearing and composing poetry, we deepen and grow. In so doing, we thicken the glue that holds together a reflective, compassionate democracy. In my view, poetry ranks with food, shelter and clothing as an essential human need. It is exposure to vivid, creative, freshly turned language – not dead, hollow rhetoric or “received language” – enables each of us to see, think and feel clearly. It is no accident that the world's sacred texts – the Bible, the Torah, the Qur'an, the Upanishads, the Buddhist Sutras – are in essence poetry.

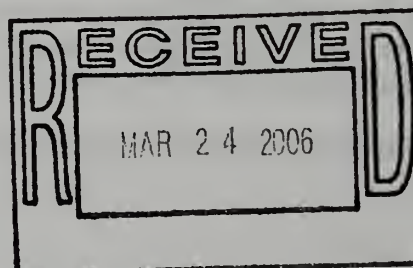
The notion of poetry as an amusement or adornment is one I hope to uproot. Not only is poetry in particular and culture in general crucial to human nutrition, it is actually a kind of “cash crop.” For example, that tourists the world over flock to my native state of Mississippi to attend the Tennessee Williams Festival, the William Faulkner Festival, the Eudora Welty Festival, the Richard Wright Festival, and the Delta Blues Festival – enhances the wealth of this traditionally cotton and timber rich region. I will continue to travel, bringing a attention to poetry, encouraging its youthful practitioners and ardent supporters. Given California's colossal treasury of poets, novelists, memoirists, playwrights, screenwriters, musicians, painters, sculptors, actors, dancers, photographers and filmmakers, the state that has given me so much, we are a far richer state than current ratings and rankings of our support of arts and education suggest.

It is further my plan to construct a powerful web site devoted to the California poetry scene and kindred topics. Texts, webcasts, lectures, class discussions, readings performances and announcements – all such content will be accessible on the site I envision. To construct and realize this cyber-forum, I will consult extensively with two enthusiastically supportive state agencies.

It is a privilege and an honor to serve California, which that has given me so much.

Sincerely,

Al Young





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24 Reported by:

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26 Evelyn J. Mizak  
27 Shorthand Reporter  
28



APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

ALSO PRESENT

MICHAEL G. LEE, General Counsel  
Agricultural Labor Relations Board

IRENE V. RAYMUNDO, Member  
Agricultural Labor Relations Board

GENEVIEVE A. SHIROMA, Member  
Agricultural Labor Relations Board





INDEX

	<u>Page</u>
Proceedings .....	1
<u>Governor's Appointees:</u>	
MICHAEL G. LEE, General Counsel	
Agricultural Labor Relations Board .....	1
Opening Statement .....	1
IRENE V. RAYMUNDO, Member	
Agricultural Labor Relations Board .....	3
Opening Statement .....	3
GENEVIEVE A. SHIROMA, Member	
Agricultural Labor Relations Board .....	5
Opening Statement .....	5
Questions by SENATOR ASHBURN re:	
Case Backlog .....	7
Questions by SENATOR BOWEN re:	
Work with Other State Agencies .....	7
Role of General Counsel .....	8
How to Determine that Staff Is Fair, Cooperative and Unbiased .....	10
Motion to Confirm All Three Appointees .....	11
Committee Action .....	12
Termination of Proceedings .....	12
Certificate of Reporter .....	13



APPENDIX: ..... 14

Written Responses to Committee Questions  
By Appointees, as well as Written  
Statements by Appointees Not Required to  
Appear: Members of the Seismic Safety  
Commission: KAHDIAH ARULMOLI, Ph.D.,  
LUCILE M. JONES, Ph.D., GARY L.  
McGAVIN, DENNIS S. MILETI, Ph.D., JEFF S.  
SEDIVÉC, and KEITH M. WHEELER;  
Members of the California Regional Water  
Quality Control Board, Central Coast Region:  
JOHN H. HAYASHI, MONICA S. HUNTER, Ph.D.,  
And JEFF S. YOUNG.



THE UNIVERSITY OF CHICAGO  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BATTIN: Now that we have a quorum present, we will begin the hearing so we can get everyone moved through the process here.

We will start with Item Number Three. We will wait for the other Senators. The Chairman is in the Health Committee, and I'm sure that Senator Cedillo is probably in a committee as well, because it's that time of year.

So, if there's no objection with the Members, we could probably do all three of the Agricultural Labor Relations Board members at the same time, unless you have specific questions. That would save everybody time, and I'm sure we could do a comprehensive hearing.

Without any objection, I'll ask if Michael Lee, Irene Raymundo, and Genevieve Shiroma would come up, we will proceed.

If you have opening statements, here's what we'll do. We'll let each of you have opening statements, say whatever you want. Please take the opportunity to introduce your family or friends if you brought them up here as well. If we have any questions from the Members, either generally or specifically to you, we'll take care of that. Then we'll just move through with the confirmation.

Mr. Lee, you're A on my list. Why don't you start.

MR. LEE: Good afternoon, Senators Ashburn, Battin and Bowen.

1 I am supported here by my wife and several of my  
2 colleagues from the Attorney General's Office, Paul Bernardino,  
3 Lisa Golco, and Nancy Lozano.

4 By way of a brief statement, I asked myself to  
5 give you some background. I was born in Berkeley, educated in  
6 California public schools in Richmond Unified School District.  
7 I attended Contra Costa College and UC Davis.

8 As a high schooler, I was a National Merit  
9 Scholarship semifinalist. I graduated from the Law School at UC  
10 Davis in 1979, and four months later I went to work at the  
11 Agricultural Labor Relations Board as a graduate legal assistant  
12 and attorney.

13 CHAIRMAN BATTIN: You've been there a long  
14 time.

15 MR. LEE: Well, I left at one point.

16 CHAIRMAN BATTIN: Oh, couldn't stay away.

17 MR. LEE: Couldn't stay away.

18 I initially worked as an attorney in the  
19 Executive Secretary's office where we considered election  
20 issues, whether or not election hearings should be held, and  
21 whether or not objections should go to hearing for a decision on  
22 an election.

23 I worked for approximately 15 months in that  
24 capacity, and then I went to the General Counsel's Office. I  
25 worked primarily as an appellate attorney, appearing in  
26 representation of the Board in the Courts of Appeal, the  
27 California Supreme Court, and in Superior Courts around the  
28 state. I've had several published appellate opinions as an

1 attorney with the Board.

2 And following my about eight years at the Board,  
3 I left and went to the Secretary of State's Office, where I  
4 worked briefly before going to the State Water Resources Control  
5 Board. I worked there about five months before going to the  
6 Attorney General's Office, where I worked for 18 years as a  
7 trial attorney and a supervisor.

8 I supervised a team of up to 11 attorneys and  
9 paralegals. My work there involved every aspect of litigation,  
10 from the initial filing of a complaint, to filing an answer, all  
11 the way through appellate proceedings, which could end up in the  
12 Ninth Circuit Court of Appeal or, theoretically, the Supreme  
13 Court. I represented the State in the Charles Ing proceedings.  
14 My job at that time was to prevent Mr. Ing and his attorneys  
15 from railroading the prosecution. And after, I think it was  
16 three years, we finally got the case down to Orange County,  
17 where he was eventually tried.

18 I was appointed March 9th by the Governor, and I  
19 sit before you today hoping for a vote in my favor of  
20 confirmation. Thank you.

21 CHAIRMAN BATTIN: Thank you, Mr. Lee.

22 Ms. Raymundo.

23 MS. RAYMUNDO: You pronounced it very well.

24 Distinguished Members of the Senate Rules  
25 Committee, I would like to start by telling you a little bit  
26 about myself.

27 I have three sons and five grandsons. I have --  
28 I'm married and have been a state employee for approximately 35



1 years. I've worked with the Employment Development Department,  
2 the Department of Corrections, and the Parole Board, the  
3 Juvenile Division.

4 I was appointed in November of 2005, and I began  
5 to think -- when I began to think about my role as a Board  
6 member, and began to identify some roles that I could -- that  
7 were attainable, I was reminded of the significant role that  
8 agriculture has played in my life, from the time that I was a  
9 child and a teenager of a migrant family in Texas, to my  
10 experience as a state employee, working on implementing the  
11 unemployment insurance, the special unemployment insurance  
12 procedures for our insurance program for farmworkers.

13 Last December, I had the opportunity to attend  
14 the annual Farmworker Appreciation Breakfast in Calexico.  
15 Breakfast was served to approximately 3,000 farmworkers during  
16 the early morning hours. I took the opportunity to speak  
17 individually to approximately 100 farmworkers, and each had a  
18 story to tell, but each story was similar, their concerns,  
19 their -- the issues that they brought up.

20 And it brought back a lot of memories, memories  
21 of my father and the things that he talked about 45 years ago.  
22 Still the same issues. It was quite -- it was memorable and  
23 quite an experience for me just listening to them and talking  
24 with them.

25 Since my appointment in November of 2005, I've  
26 met with growers, agribusiness representatives, union  
27 representatives, and I've listened to their comments and their  
28 concerns. I've also listened to suggestions from ALRB staff,

1 and as a result of that, I have established some realistic and  
2 attainable goals.

3 One is to increase our outreach. Farmworkers  
4 need to know what their rights are under the Agricultural Labor  
5 Relations Act.

6 Number two is to update our technology to improve  
7 our case tracking system. We need to identify the timeliness,  
8 and we need to be able to provide statistical information when  
9 requested. We need to know what we're doing and how well we're  
10 doing it.

11 And we are going to bring closure to old  
12 compliance cases. The Board has established a procedure to do  
13 that, and we're going to accomplish that in this year.

14 And last and most important, I want to express my  
15 commitment to continue to provide a fair and timely  
16 administration of the Act. I'm totally committed to that.

17 Thank you.

18 CHAIRMAN BATTIN: Thank you.

19 Ms. Shiroma.

20 MS. SHIROMA: Yes, thank you, Chair.

21 Good afternoon, Chairman Battin and Members of  
22 the Rules Committee. I'm deeply honored to appear before you  
23 for consideration for confirmation to the Agricultural Labor  
24 Relations Board.

25 I do have a few family members and a few friends.  
26 Family members include my husband, Michael Abbott; my dad, David  
27 Takeo Shiroma, my sister Amy Shiroma.

28 In June, I will celebrate 28 years of state

1 service. Irene and I have a lot of that in common.

2 As my resume indicates, I began as an engineer in  
3 1978 with the California Air Resources Board, and over these  
4 past seven years, I've been very privileged to serve on the  
5 ALRB. During this time, I applied careful deliberation in each  
6 case which came before me. I deliberated on cases involving  
7 election questions, bargaining, concerted activity,  
8 jurisdiction, back pay, make whole.

9 As my letter indicates, we also expanded our  
10 education and outreach materials, and we will do much more. And  
11 we adopted regulations to implement new laws.

12 I also made a point of attending agricultural  
13 economic seminars and conferences, and getting out into the ag.  
14 setting: onion harvesting in El Centro; palmettos, picking  
15 dates in the Coachella Valley; citrus in Ventura; flower  
16 nurseries on the coast and in the San Joaquin Valley; dairies;  
17 wine grapes; strawberries; orchards; row crops; harvesters; cold  
18 storage; canneries.

19 And I came away each time with an appreciation  
20 for the magnificence of the California land and people. The  
21 skilled workers are very impressive. The commitment of the  
22 farmers is strong, and my commitment to the Act and to the work  
23 of the Board remains resolute.

24 Finally, I grew up in the northern San Joaquin  
25 Valley in Acampo, just south of Galt, three miles north of Lodi,  
26 with a view to the east of the snow-capped Sierras, a view to  
27 the west of the silhouette of Mt. Diablo, and the hum of Highway  
28 99 lulling us to sleep at night.

1 Little did I know then that I would have the  
2 privilege of serving the people in the State of California on  
3 the ALRB. I am humbled and honored.

4 Thank you. I would be happy to answer any  
5 questions you may have.

6 CHAIRMAN BATTIN: Thank you very much.

7 Are there any questions from Members?

8 SENATOR ASHBURN: Just one, Mr. Chair.  
9 Mention.

10 Was made about the compliance cases, and I  
11 interpreted that to mean a backlog of cases, because you  
12 referred to them as old.

13 How many are there?

14 MS. RAYMUNDO: I believe there's like 13 cases  
15 that we will be scheduling.

16 SENATOR ASHBURN: And it's realistic to expect  
17 that you can clear that backlog within a year?

18 MS. RAYMUNDO: Yes. The Board has been very  
19 careful and has developed a protocol that we will be using to  
20 close those cases.

21 SENATOR ASHBURN: Thank you very much.

22 CHAIRMAN BATTIN: Senator Bowen.

23 SENATOR BOWEN: Actually, a question for all  
24 three.

25 How does the ALRB work with other state agencies  
26 to protect farmworkers? And specifically I'm interested in what  
27 happened last year with the controversy about heat-related  
28 illnesses, and what role you believe the ALRB should play



1 specifically vis-a-vis other state agencies?

2 MS. RAYMUNDO: Since Genevieve was here last  
3 year, I will defer to her.

4 MS. SHIROMA: Being under the umbrella of the  
5 labor agency, we have very close communications with our sister  
6 agencies.

7 We didn't have a direct authority in that  
8 particular case.

9 However, what we have done is -- is to develop  
10 new education materials for this coming season. In fact a PSA  
11 which informs farmworkers that should they have a heat-related  
12 issue, what the law says in terms of protections for that. In  
13 other words, if a farmworker seeks assistance because of duress,  
14 and if there is retaliation, the law protects them from that  
15 retaliation.

16 Perhaps the General Counsel would like to speak,  
17 too. We have a communication developed between Cal OSHA, and  
18 DIR and ourselves and others that occurs on a regular basis.

19 SENATOR BOWEN: For Mr. Lee in particular, I have  
20 a question about what your role is as the General Counsel if a  
21 farmworker complains about working conditions and gets fired?

22 MR. LEE: Our role as the General Counsel is, of  
23 course, to investigate the case to determine what the case's  
24 merits are, and whether or not any charge should go to  
25 complaint.

26 So what we do is, we look at any particular  
27 incident to determine whether or not it's covered by the Act.  
28 If it's an activity that involved two or more farmworkers, it

1 would be covered by the Act. If it's not, then it would not be  
2 considered concerted activity, and it wouldn't be covered by the  
3 Act.

4 SENATOR BOWEN: It takes two people being  
5 effected?

6 MR. LEE: Yes.

7 MS. RAYMUNDO: Could I add something to that,  
8 though.

9 Some of our outreach efforts, I was in El Centro,  
10 and I had the opportunity to speak, listen to, not only the  
11 farmworkers, but labor contractors, some growers.

12 One of the things that we have done very well is  
13 outreach. And sometimes we're able to answer questions before  
14 it becomes a problem, which is what we would like to do. When  
15 it becomes a problem, we definitely have our coordinated efforts  
16 through our sister agencies, we call them.

17 SENATOR BOWEN: But see, the investigation is the  
18 done, and it's determined that it's retaliation. What happens  
19 then?

20 MR. LEE: Following an investigation, then what  
21 we would do is discuss the case with the parties to attempt to  
22 resolve the case short of going to an unfair labor practice  
23 hearing.

24 If we're unable to do so that, then we file a  
25 complaint. The complaint goes to hearing, and once it goes to  
26 hearing, then it's the Board's case.

27 SENATOR BOWEN: And one other thing, Mr. Lee.  
28 Again, I don't mean to pick on you. Just a couple of questions.

1           Your Statement of Goals mentions that you want to  
2 ensure that your staff is fair, cooperative, and unbiased,  
3 which, of course, is a statement that I would hope everyone in  
4 this building, in fact on this planet would adopt. And because  
5 I'm interested in everyone doing that, I'd like to know in  
6 particular how you plan to do it, see if we can learn a little  
7 bit from your plans.

8           MR. LEE: What I've started doing already is  
9 meeting with staff. I've been to each of the three regional  
10 offices, and I've discussed our cases, and our approach to  
11 handling cases, the employees' concerns about their work, and  
12 let them know what my expectations are.

13          SENATOR BOWEN: How do you know if someone's  
14 being unfair, uncooperative, or biased?

15          This is always a difficult question for all of  
16 us.

17          MR. LEE: It's a difficult question, but one of  
18 the things that I observed in meeting with staff is that it  
19 appears that the grower community as well as the union community  
20 thinks well of them. And they feel that they're working  
21 cooperatively with them. So, that's something that we certainly  
22 hope to maintain.

23          SENATOR BOWEN: Anyone else on the question of  
24 work with other state agencies to deal with things like  
25 heat-related illnesses? I didn't give everyone a chance, I  
26 don't think.

27          MS. RAYMUNDO: Well, I really don't have anything  
28 to add. It was a very good question.

1           As I'm there longer, we'll take closer look at  
2 it, but what I have observed is that not only did the National  
3 Labor Relations Act help us in a time of need, the sister  
4 agencies have helped us, and it's been a very coordinated and  
5 cooperative effort.

6           SENATOR BOWEN: I think the concern is just  
7 timing, and making sure that things get done rapidly so that  
8 when we have something -- it won't be heat the next time; it'll  
9 be some other incident -- but in the interim when there's a  
10 delay, obviously we put more people at risk.

11          MS. RAYMUNDO: Yes, you're right.

12          SENATOR BOWEN: I know you're all mindful of  
13 that.

14          MS. RAYMUNDO: Absolutely.

15          MR. LEE: I can add that in regard to the  
16 outreach that we do, we work jointly with DIR, Cal OSHA, Labor  
17 Standards, all of the other labor agencies in respect to  
18 informing the worker population of their rights.

19          SENATOR BOWEN: Thank you.

20          SENATOR ASHBURN: Mr. Chair, I'll make a motion  
21 for all three of the nominees.

22          CHAIRMAN BATTIN: Thank you, Senator Ashburn.

23          Before we take a vote, is there anyone who would  
24 like to speak on behalf or in favor of these, appointments, or  
25 specifically for any one of the members?

26          Anyone who would like to speak in opposition to  
27 their appointment? Seeing neither, wow. I don't know if  
28 that's ever happened before.



1 We have on motion in front of us. Please call  
2 the roll.

3 SECRETARY WEBB: Ashburn.

4 SENATOR ASHBURN: Aye.

5 SECRETARY WEBB: Ashburn Aye. Bowen.

6 SENATOR BOWEN: Aye.

7 SECRETARY WEBB: Bowen Aye. Battin.

8 CHAIRMAN BATTIN: Aye.

9 SECRETARY WEBB: Battin Aye. Three to Zero.

10 CHAIRMAN BATTIN: That is enough to get out of  
11 Committee. We will leave the roll open for Senator Perata and  
12 Senator Cedillo to come down.

13 Congratulations to you.

14 [Thereafter, SENATOR PERATA and  
15 SENATOR CEDILLO added their Aye  
16 Votes, making the final vote  
17 5-0 for confirmation.]

18 [Thereupon this portion of the  
19 Senate Rules Committee hearing  
20 was terminated at approximately  
21 2:03 P.M.]

22 --ooOoo--  
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CERTIFICATE OF SHORTHAND REPORTER

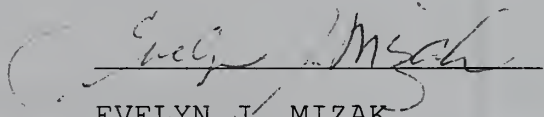
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

26<sup>th</sup> day of April, 2006.

  
EVELYN J. MIZAK  
Shorthand Reporter

## APPENDIX

**AGRICULTURAL LABOR RELATIONS BOARD**

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April 14, 2006

Honorable Don Perata, Chairman  
Senate Rules Committee  
California Legislature  
State Capitol, Room 500  
Sacramento, CA 95814

Dear Senator Perata:

I am a native Californian and I am proud to have been selected to serve as General Counsel of the Agricultural Labor Relations Board by Governor Schwarzenegger. I previously worked eight years for the Board as an attorney. I believe that experience, in addition to serving over 19 years as a Deputy Attorney General and a staff counsel at the Secretary of State's Office and the Water Resources Control Board, has provided me with the insight and ability to serve the people of California as General Counsel of the ALRB. I look forward to being confirmed by the State Senate.

Herein, I share my long and short term goals as General Counsel.

**SHORT TERM GOALS**

In the short term, I plan to visit with my staff, find out their needs, let them know that their hard work and dedication are appreciated, and that I support them. I plan to work on things which will make it easier for staff to work more efficiently and effectively.

Along with the Board, I will work on doing a better job of compiling and maintaining case statistics. Together we will seek to insure that any kind of information which will enable us to be more effective is readily available and that such information is also available to the Legislature and the public.

I will insure that my very capable staff is fair, cooperative and unbiased. The staff will be courteous and helpful to employees, union staff and growers and their staff. We will do all we can to instill confidence that all who come before the Board will receive a fair shake and that justice will be served.

In addition, I will support the continuation of the Board's outreach efforts to insure that all agricultural employers and agricultural employees are aware of the Board and the law

**APR 14 2006**



Honorable Don Perata, Chairman  
April 14, 2006  
Page 2

that it enforces. Furthermore, I intend to work with the Board and my staff to resolve all of the pending compliance cases as soon as possible.


#### LONG TERM GOALS

I intend to do everything I can to help staff be as effective and efficient as possible. Toward that end, I will work to see that staff quickly resolve any pending unfair labor practice charges, either by dismissal or filing a complaint. I will encourage staff to settle as many charges as possible and, when it is not possible to settle the charges, to schedule the cases for hearing as soon as possible.

To effectively do their jobs, I believe the staff in at least two regional offices needs to be augmented. Both the El Centro and Salinas Regional Offices are currently working without a clerical. Secretarial help in both offices will go a long way toward enabling the professional staff to more quickly and effectively investigate cases, file charges or dismiss charges, compile necessary statistics and handle compliance cases. Therefore, I will undertake to obtain funding for clerical positions in both offices.

I look forward to serving the people of the State of California as General Counsel of the ALRB. I also appreciate the opportunity to answer any questions the committee may have.

Sincerely,

  
MICHAEL G. LEE  
General Counsel

## AGRICULTURAL LABOR RELATIONS BOARD

IRENE RAYMUNDO, Chairperson  
915 CAPITOL MALL, THIRD FLOOR  
SACRAMENTO, CA 95814  
(916) 651-7633  
FAX (916) 653-8750



April 13, 2006

Don Perata, Chairman  
Senate Rules Committee  
State Capitol, Room 420  
Sacramento, Ca. 95814

Dear Senator Perata,

Thank you for the opportunity to appear before you today to outline my goals and objectives as a Board Member of the Agricultural Labor Relations Board.

When I was appointed in November 2005, I began to contemplate my role as a Board Member and to identify some attainable goals to pursue.

I was reminded of the significant role that agriculture has played in my life from the time I was a child and teenager in a migrant farm worker family working in Texas, to my experience as a state employee implementing the special unemployment insurance program for farm workers in Sanger, Ca.

In December 2005, I had the opportunity to attend the annual farm worker appreciation breakfast in Calexico, Ca. Breakfast was served to approximately 3,000 farm workers during the early morning hours. I took this opportunity to speak individually to approximately 80 to 100 farm workers. Each had a different story to tell but all had similar concerns. Many of the farm workers that I spoke with voiced some of the same issues and concerns that I heard from my father some 45 years ago. It was quite an experience that brought back many memories.

During the last couple of months, I have met with some growers, agri-business and some union representatives and listened to their concerns and comments.

I have also consulted with the ALRB staff and solicited their input regarding goals the Board should be pursuing.

After careful review and consideration of all the information that I have received, I believe the following goals are attainable during my term if confirmed.

APR 17 2006

## IMMEDIATE GOALS

### OUTREACH and EDUCATION

It is my goal to encourage the increase of educational activity by utilizing public service announcements, participating in local community forums and making available ALRB literature, CD's and videos.

The people of the State of California have given farm workers the legal right to engage in group activities for their mutual aid and or protection. Thus, farm workers need to know they have a right to individually or collectively address their concerns such as safety or sexual harassment issues. They need to know that when they do this, the law protects them from losing their job or otherwise being adversely affected. The remedy is not always monetary, often times it is required mandatory educational training for supervisors who have violated the law.

### CLOSURE OF OLD COMPLIANCE CASES

It is my goal in conjunction with the General Counsel's review and recommendation, to close the old "back log" of cases. It is my goal to accomplish this during this calendar year.

These are cases where Board action/decision have taken place and a remedy has been ordered. The ALRB Regional Directors have investigated and determined monies cannot be collected i.e., the employer filed bankruptcy, left the state or monies cannot be collected. Concurrent with the closure of these cases, the workers are eligible for funds from the Agriculture Relief Fund.

### USE OF TECHNOLOGY

I have set a high priority to update our computer software and develop a more user friendly case tracking system. The information generated will provide current and complete statistical information, as well as a case monitoring system.

I feel fortunate to have Ms. Genevieve Shiroma on our Board. She has volunteered to take the lead in this project, and I am pleased to report that we are making steady progress.

## ONGOING GOALS

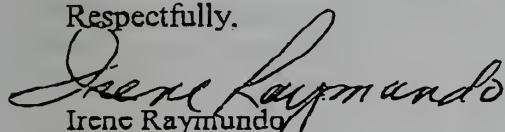
### CONTINUE TO PROVIDE FOR FAIR AND TIMELY ADMINISTRATION OF THE ACT

My assessment of the Board's enforcement of the act is that it is consistent and committed to applying the law in a fair and uniform manner. My assessment was confirmed by an agri-business representative at a recent Western Growers event and I quote "in recent years, the Board has made balanced and well thought out decisions".

My commitment and goal is to provide leadership to the Board and continue to be consistent in the application of the law in a fair and uniform manner.

I look forward to serving the people of the State of California as a member of the ALRB. If I can answer any further questions or provide further information, please call me at (916) 651-7621.

Respectfully,

  
Irene Raymundo  
Chairperson, ALRB





## AGRICULTURAL LABOR RELATIONS BOARD

GENEVIEVE A. SHIROMA, Member

115 CAPITOL MALL, THIRD FLOOR

SACRAMENTO, CA 95814

(916) 653-3803

FAX (916) 653-8750

Internet: www.alrb.ca.gov



Honorable Don Perata  
Chairman, Senate Rules Committee  
California Legislature  
State Capitol, Room 500  
Sacramento, CA 95814

April 14, 2006

Dear Senator Perata,

APR 1 / 2006

It has been a privilege to serve as a Board Member and Chair on the Agricultural Labor Relations Board (ALRB/Board) for the past seven years, particularly so as a farmworker daughter. I am deeply honored to be reappointed to the Board by Governor Arnold Schwarzenegger. I respectfully request the Senate Rules Committee confirm my appointment.

In the following, I highlight a number of accomplishments and provide a statement of my goals for the future.

**Accomplishments:**

Established a Pattern of Fair, Timely, and Impartial Decisions - Each case which come before the Board was given appropriate due process and deliberation and handled expeditiously. We relied upon existing case law, did not set new precedents, and have been substantially upheld in the higher courts.

Formed an Ad Hoc Advisory Committee - We formed an advisory committee consisting of representatives from union, employer, and nonprofit organizations to advise the Board on education and outreach materials.

Established a Protocol for Closing Cases and Adopted Regulations to implement the Agricultural Employee Relief Fund (AERF) law - The Board took an important step in establishing criteria for closing old cases for which all remedies had been exhausted and the employers had long been bankrupt or out of business. With the subsequent adoption of the AERF statute in 2001, regulations are in place to provide a means to give available monies to farmworkers owed backpay in closed cases.

Expanded Education Efforts - Despite limited resources, we recognized that to have an effective program, the farmworkers, unions, and employers need to know the requirements of the Act. The staff and the Board participated in job fairs, farmworker breakfasts, seminars, conferences, and meetings to provide information to interested parties. New brochures in English and Spanish for both farmworkers and employers are now available, as well as a Spanish language novella describing the ALRB's election

process. Public Service Announcements in Spanish have been distributed to radio stations containing the ALRB's 800 number.

Adopted Regulations to implement the Mandatory Mediation and Conciliation law – In 2002, legislation setting into statute new requirements governing acquiring first contracts was signed into law. The Board adopted regulations to implement the new law after public discussion with the Ad Hoc Advisory Committee and a full public hearing process.

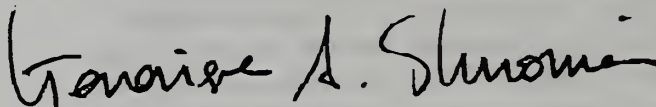
**Goals:**

Continue to Provide for Fair, Orderly, and Timely Administration of the Act – The vision of the Act is that true labor peace comes about through the existence and effective implementation of a stabilizing labor law. Farmworker, union, and employer alike should be able to expect that the law will be enforced and that the process will be fair and timely. I remain absolutely and steadfastly committed to this expectation.

Continue to Expand Education and Outreach Efforts, Especially for Underserved Farm Worker Populations – There are 800,000-900,000 farmworkers working in California for nearly 35,000 farm employers scattered throughout the state. A great majority of these workers neither speak nor read English. Further, there is an increasing presence in the fields of indigenous peoples from Mexico and other Latin American countries. Typically, these workers speak only their native language and have difficulty communicating with either the Spanish-speaking farmworker population or with the ALRB's own bilingual staff. I will continue to work with the Board and the stakeholders towards developing effective outreach techniques.

In conclusion, I am very humbled and honored to be able to continue to serve the people of California at the ALRB. I am gratified that my years of experience will be of service to the work of the Board. As the ALRB approaches 31 years, the Act remains a vital and important law, protecting the collective bargaining rights of farmworkers – unquestionably essential to the economy of the State of California. I can be reached at (916) 653-3803 should there be any questions.

Sincerely,



Genevieve A. Shiroma  
Board Member



April 11, 2006

Hon. Senator Don Perata  
Chairman, Senate Rules Committee  
California Legislature  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Attention: Ms. Nettie Sabelhaus  
Appointments Director

Subject: Seismic Safety Committee Appointment Confirmation Hearing  
Updated Form 700 and Requested Information

Dear Ms. Sabelhaus:

In response to the letter from the Rules Committee Chairman, Honorable Senator Don Perata, dated March 27, 2006, I have prepared this letter to provide you with the requested information.

The updated Form 700, Statement of Economic Interest, is enclosed.

The following paragraphs outline my responses to the eight questions that were asked in the letter from Honorable Senator Perata to provide more information about my work on the Seismic Safety Commission to help the Rules Committee make an informed decision during my confirmation hearing on my appointment to the commission. Since I have been serving on the commission only for the past few months, I am not intimately familiar with the details of the commission's activities prior to my appointment. Therefore, I had to rely on the commission's staff to obtain information on commission's past activities to provide meaningful answers to some of the questions.

The eight questions have been repeated in this letter in italics with my answer following each question.

*Question No. 1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? What goals do you have for the commission and how will you accomplish them?*

I have a very strong educational background is geotechnical earthquake engineering (covered under the title of "Soil Engineer" in the Seismic Safety Commission) and I have been practicing in the same field in California since 1982 helping public agencies build

APR 11 2006



Letter to Rules Committee

April 11, 2006

Page 2

cost-effective infrastructure that have been designed to minimize earthquake-induced impact to the public. I feel that with my expertise and experience in the area of geotechnical earthquake engineering, I will be able to contribute to the commission's mission of providing the state's decision makers and the public with cost effective recommendations to reduce earthquake losses.

In addition, I am keenly aware of the devastations caused by recent calamities such as the 2004 Sumatra tsunami and 2005 Katrina (I have had the misfortune of losing some distant family members and friends during the Sumatra tsunami in Sri Lanka) and how proper design (in the case of the New Orleans levee) and preparation (an early warning system for the Indian Ocean) could have significantly minimized the loss of lives and properties. By working with the other commissioners, who all have expertise in different disciplines that are essential to reducing earthquake-related losses, I hope to contribute to the mission of the commission. I believe that I have already made some contribution by participating in the committee that is updating the Commercial Property Owner's Guide to Earthquake Safety, a counterpart to the Homeowner's Guide to Earthquake Safety the commission updated in July 2005. I intend to actively participate as a commissioner in future activities related to tsunami risk reduction in addition to other earthquake risk reduction activities.

*Question No. 2. What is the status of the commission? Has a decision been made regarding its future?*

Since December 2005, commissioners, commission staff and legislative staff have held three meetings with representatives of the Governor's Office to discuss the Administration's concerns. After the last meeting on March 6, 2006, the commission staff (along with staff from Senator Elaine Alquist's office and Assemblymember Carol Liu's office) prepared a written summary of the points discussed and agreed-to at the March 6, 2006 meeting. That written response was transmitted to the Administration on March 7, 2006. The Administration indicated they would prepare a written response to the summary, including some proposed statutory amendments to include in SB 1278. The Administration's response has been delayed. The Administration has indicated it is working on its proposal, but as of April 3 of this month no written document has been received by either the commission, or the offices of Senator Alquist or Assemblymember Liu.

*Question No. 3. Are there discussion on changing the commission from an independent body and transferring its functions to a state agency? Do you believe such a transfer of functions would benefit the work of the commission?*

At the three meetings with the Administration, the issue of changing the commission's status has been raised. The Administration has inquired about the prospect of re-positioning the commission so that it would access the Governor's Office via a Cabinet Secretary's office (presumably the State and Consumer Services Agency Secretary). At the March 6, 2006 meeting, the Administration suggested that the re-positioning could be accomplished without any changes to the commission's independence to access the Legislature, take positions on legislation, or sponsor its own legislation. However, the

Letter to Rules Committee

April 11, 2006

Page 3

details of how this arrangement would function have not been presented by the Administration in any written form. As of April 3, no written proposal has been received by the commission.

I believe that the independence of the commission is one of the significant attributes of this commission's function allowing it to provide unbiased and objective opinions and inputs on significant seismic safety issues to the Governor, Legislature, and the public. Taking away the independence of the commission, in my humble opinion, would reduce the effectiveness of commission's work.

*Question No. 4. Has the commission studied how earthquakes in non-urban areas, such as an earthquake in the Delta, could affect the state? Have plans been developed to mitigate the effects of an earthquake in the Delta for levee failures, broken pipelines, or the severing of the water supply to Southern California?*

I understand that the commission has identified the vulnerability of the Delta levees for some time now. Specifically, this issue was cited in the commission's California at Risk document and then again in the California Earthquake Loss Reduction Plan. The Commission held hearings on the delta levees in the mid 1990's and, based on testimony given at those hearings, added the seismic vulnerability of the levees and water delivery systems to our plan.

The commission has not done detailed studies on the delta levee system. I believe that the Department of Water Resources has the lead on this issue. The commission has not given priority to non-urban areas, such as farmland, in its efforts to reduce earthquake losses. It has worked with smaller local governments regarding their efforts to retrofit or tear down unreinforced masonry buildings.

*Question No. 5. What action has the commission taken to highlight the needs for seismic retrofitting of the 500 bridges and overpasses maintained by local governments?*

The commission periodically compiles progress on such earthquake safety initiatives as local bridge retrofits. Recently, the commission staff responded to inquiries from the LA Times regarding the collapse-risk of locally-owned bridges. The commission referred the Times reporter to available information within the state's Multi-hazard Mitigation Plan that the commission compiled in 2004. It identified 1,100 local bridges as needing seismic retrofits, and that as of 2001, 500 bridges had been retrofitted. That plan listed costs for retrofitting local bridges as on the order of \$1 billion. The commission staff also referred the reporter to program managers within Caltrans to obtain an update on progress. Nearly 600 locally-owned bridges remain vulnerable as of March 2006.

In 2004, the commission adopted the state's earthquake research plan that includes measures that will benefit bridge seismic safety. In 2003, the commission reviewed progress by the Pacific Earthquake Engineering Research Center which includes a major bridge research component. In June 2002, the commission was briefed on Caltrans' Seismic Bridge Details Development Program which included testing of parts of bridges



Letter to Rules Committee  
April 11, 2006  
Page 4

and retrofitted connections. In 2001/2002, a representative of the commission advised the Bay Area Rapid Transit District during an independent review of its seismic retrofit project of bridges.

*Question No. 6. Bond bills (AB 134 and SB 1024) pending before the Legislature include funds for this retrofit program. Do you, or does the commission, have a position on this component of these bills?*

The commission staff is preparing bill analyses of AB 134 and SB 1024 for commissioners' review. While the commission may take and publish a formal position on the bills in the near future, the commission does not have a formal approved position at this time. Although I do not have a formal position on these bills at this time, I would support the component of the bills that funds for the retrofit of local government owned bridges.

*Question No. 7. Does California have an adequate tsunami warning system? How could the current warning system be strengthened?*

At this time the tsunami warning system in California has not achieved all of its objectives with problems that include communications, agency co-ordination and protocols. Since the December 2004 Sumatra tsunami and the June 14, 2005 tsunami warning in northern California, the Governor's Office of Emergency Services (OES) and many local governments have been proactive in addressing the State's tsunami risk. Recommendations for strengthening the current warning system are as follows:

1. Improve tsunami education to all California schools and coastal populations.
2. Update tsunami preparedness materials and develop multi-language educations materials to be made available in the workplace (especially ports) and coastal areas.
3. Work with other coastal states to obtain an external expert review of NOAA tsunami criteria for issuing and canceling warnings.
4. Support efforts to provide tsunami mitigation programs in coastal counties and in OES, including improvements to the communications and emergency response systems.

*Question No. 8. Do current building codes take into account the threat of tsunamis? Has the commission made recommendations on upgrading the building code to take tsunamis into consideration?*

Currently, the California Building Code does not address the risk of tsunamis. No state agency has the specific authority to promulgate such building safety regulations at this time.

The commission's December 2005 report titled "The Tsunami Threat to California,"

Letter to Rules Committee

April 11, 2006

Page 5

recommends to "continue to work with federal agencies to develop guidelines for structures to resist both strong ground motion and tsunami wave impact."

I appreciate the opportunity to provide you with the requested information. Please let me know if you have any other questions or need additional information. I can be reached by phone at (714) 751-3826 or via e-mail at [arulmoli@earthmech.com](mailto:arulmoli@earthmech.com).

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Arulmoli', enclosed within a large, loopy circular flourish.

Kandiah Arulmoli

19275 Woodlands Lane  
Huntington Beach, CA 92648



the first of these is the fact that the system is not a simple one, and that the results are not always the same.

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# United States Department of the Interior

## U.S. GEOLOGICAL SURVEY

### U.S. Geological Survey

Ms. Nettie Sabelhaus  
 Rules Committee Appointments Director  
 State Capitol, Room 420  
 Sacramento, CA 95814  
**4/10/06**

Dear Ms. Sabelhaus,

Below are my answers to the questions about the seismic safety in the state of California requested by Mr. Perata. I appreciate the chance to express my opinions about policies on a subject about which I care so deeply. I have no changes to my financial statement Form 700.

### Statement of Goals

I have served on the Seismic Safety Commission for almost four years. I have found the experience to be both more frustrating and more rewarding than I expected it to be. I hoped, when I took the appointment on the California Seismic Safety Commission, to reduce the human and financial toll of future earthquakes in California. I feel that I have made a contribution, especially through the studies and reports I have written for the Commission, including "A Safer, More Resilient California: The State Plan for Earthquake Research", "Findings and Recommendations on Seismic Safety Policies and Requirements for Public, Private, and Charter Schools" and "Tsunami Threat to California: Findings and Recommendations". The school report, in particular, has made me aware of the gaps and successes in our strategies to ensure school safety and has made me a stronger advocate for the necessary steps to assure that our children are safe. I have been astonished to see that a bill to weaken the school safety provisions has been introduced in every legislative session and proud to see that the Legislature has never passed one.

I have particular interest in other areas, as well. I am interested in seeing the research conducted on earthquakes in California applied to reducing the risk faced by our citizens. I bring my professional knowledge of research activities in this area to the policy issues faced by the Commission. I can advise other commissioners about applicable research and new findings that should be considered in our decisions. I also seek to improve public awareness of earthquake hazards and the opportunity for individuals to reduce their own risk through mitigation and preparedness. I bring my experience in education and outreach of earthquake hazard information to the activities and projects of the commission.

### Funding Sunset for the Commission

You asked about the status of the Commission and decisions about its future. The Commission voted unanimously to advocate to retain its present standing and organization. Since December 2005, Commissioners, Commission staff and legislative staff have held three meetings with representatives of the Governor's Office to discuss the Administration's concerns. After the last meeting on March 6, the

Earthquake Hazards Team  
 525 South Wilson Avenue  
 Pasadena, CA 91106  
 T 626.583.7823  
 F 626.583.7827

APR 11 2006

Commission staff (along with staff from Sen. Elaine Alquist's office and Assemblymember Carol Liu's office) prepared a written summary of the points discussed and agreed-to at the March 6 meeting. That written response was transmitted to the Administration on March 7. The Administration indicated they would prepare a written response to the summary, including some proposed statutory amendments to include in SB 1278 (Alquist). The Administration's response has been delayed. I understand that it has just been sent to the Commission's office but I have not yet seen the contents.

At the three meetings with the Administration, the issue of changing the Commission's status has been raised. The Administration has inquired about the prospect of re-positioning the Commission so that it would access the Governor's Office via a Cabinet Secretary's office (presumably the State and Consumer Services Agency Secretary). At the March 6 meeting, the Administration suggested that the re-positioning could be accomplished without any changes to the Commission's independence to access the Legislature, take positions on legislation, or sponsor its own legislation. However, the details of how this arrangement would function have not yet been presented by the Administration in any written form.

To me, this independence is a minimum requirement for me to continue as a Commissioner. The State of California needs an independent watchdog to ensure that the need for seismic safety is not forgotten between big earthquakes. The Commission serves two functions that are not fulfilled by any other agency in State government. First, it provides an holistic look at the earthquake problem across all the stakeholders – and it takes 17 commissioners to cover all the bases. Second, it has the ability to provide advice on legislation. It is in legislation that the rubber meets the road and actions are taken to improve our safety. Moving the Commission into a state agency would, I fear, prevent the Commission from talking directly with the Legislature and taking positions on bills without first clearing the opinions with the administration. This can only lead to over-politicization of what should be impartial professional advice.

I am a federal employee, the Scientist-in-charge for Southern California with the U. S. Geological Survey. My superiors have approved me using government time to work with the Commission, believing as I do that the independence and the direct interaction with the Legislature, make the Commission an important vehicle for accomplishing my federal mission to improve seismic safety. If the Commission were to be moved into a State agency, I could no longer justify the donation of my federally-funded time to support the work of a State agency subject to State executive control. I would, in that situation, resign my commission.

It is critical that the Legislature establish a funding source for the Commission by the end of this fiscal year. It will take a year for the Commission to wrap up its affairs and that process will have to begin early in the next fiscal year without an established funding source. I would hate to be the legislator who had eliminated the Commission when the next earthquake strikes.

#### **Earthquakes in non-urban areas**

Several years ago, the Commission held a series of hearings to evaluate the effect of earthquake damage to the levees of the San Joaquin Delta on the whole State, although those never led to a formal report. More work could be done in this area. The U. S. Geological Survey California Water Science Center is also looking at the impact of natural disasters on the States water supply, and this is

an area where a federal-state partnership to evaluate the risk and prepare a response plan could be particularly useful.

### **Seismic retrofitting of bridges and overpasses.**

The lack of retrofitting of county and local bridges is part of a larger problem of retrofitting needs of all types in local government. So much of California's infrastructure and public buildings were built before the 1971 earthquake demonstrated the failings of many of our construction techniques that California's local governments have a huge investment in substandard (by today's standards) buildings and other structures. Tackling the full problem is then beyond the means of the local government. Afraid of the liability from seismic risk, they respond by ignoring it all. When they do not fix their own problems, they are in no position to encourage responsible action from their businesses and other private citizens. California is in need of innovative policies that can encourage the use of modern knowledge about the risk to improve our resiliency without encouraging avoidance through fear of liability.

All of these factors come together to increase our risk from earthquakes. One of the important lessons from Hurricane Katrina is the interdependence of our society. Failures of the road system makes it more difficult for the businesses to reopen which will reduce the resources for repairing the schools which will make it difficult for workers to return to work, etc. The public and private sectors will succeed and fail together. The most difficult question is how to prioritize the many different retrofitting demands. that require our resources.

The Commission staff is still collecting information on the bills AB134 and SB1024 so the Commission has not yet taken a position on these bills.

### **Tsunamis**

I wrote much of the recent Commission report on the tsunami threat to California (this report can be accessed from the Commission's website). In that investigation we found both successes and continuing challenge for the tsunami warning system. One major weakness is that our population has not been trained, or even informed about how to best respond to a tsunami warning. This applies to earthquakes as well – our school curriculum does not give our children the information they need to make informed decisions about the natural hazards they face in California. I think it is likely that when a tsunami warning for a dangerous tsunami is next issued in California, many people will behave in ways to put themselves at greater risk.

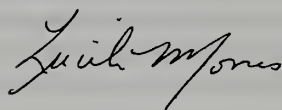
The report we wrote highlights two other problems that people are working to address but will need continued attention. First, we are not making the use of modern technology for communication that we could be. During the tsunami alert issued by the National Oceanic and Atmospheric Administration in June 2005, it is clear that many local governments did not receive the information in a timely and understandable manner. Second, that alert was essentially a false alarm and aspects of the NOAA system are not using the modern science that it could to issue more rapid and more accurate predictions of the tsunamigenic potential of large earthquakes. The report calls on California to work with other western states to ensure that the NOAA warning system undergoes an independent expert review.



The present building code does not include provisions for tsunamis. The tsunami inundation maps (maps showing where tsunamis are possible) are not yet adequate for implementing any sort of code provisions. The tsunami report recommends that the State of California work with the federal government to develop guidelines for tsunami building standards and to support development of improved tsunami hazard mapping.

Thanks you again for the opportunity to address these issues.

Sincerely yours,

A handwritten signature in cursive script, reading "Lucile M. Jones".

Earthquake Hazards Team  
525 South Wilson Avenue  
Pasadena, CA 91106  
T 626.583.7823  
F 626.583.7827

Dr. Lucile M. Jones  
Scientist-in-charge for Southern California

**GARY L. MCGAVIN, AIA**  
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 447 LA VERNE STREET, REDLANDS, CA 92373  
 (909) 748-0014 VOICE / (909) 748-0024 FAX / (951) 315-4222 CELL  
 VANWALL38@MSN.COM

April 8, 2006

Senator Don Perata  
 Chairman, Senate Rules Committee  
 Care of: Ms. Nettie Sabelhaus, Senate Rules Committee Appointments  
 State Capitol, Room 420  
 Sacramento, CA 95814-4900

Regarding: Senate Confirmation of Gary L. McGavin, AIA to Seismic Safety Commission

Senator Perata:

It gives me great pleasure to respond to the questions that the Senate Rules Committee has proposed for my Senate Confirmation to the California Seismic Safety Commission in your letter of March 27, 2006. In addition to the following responses, I have also enclosed my updated Statement of Economic Interest (Form 700) and a current resume for the Committee's review. As an architect and educator, I firmly believe in the value of seismic safety for all Californians.

**Statement of Goals**

1. *What do I hope to accomplish during my tenure as a member of the Seismic Safety Commission? What goals do I have for the Commission and how will I accomplish them?*

I am very fortunate as this is my second opportunity to serve on the Seismic Safety Commission. I was able to serve as Governor Wilson's appointee from 1991 to 1999. Following the completion of my first appointment, I continued to work with the Commission on legislative issues between 1999 and 2005. I am interested in continuing the work that I began in 1991 with my new appointment by Governor Schwarzenegger.

My professional interest in seismic safety is twofold. First, I am an Associate Professor of Architecture at California Polytechnic University, Pomona in the Department of Architecture where I teach structures and earthquake engineering. My practice as a licensed architect centers around public and institutional design. The bulk of my design work is K-12 school design. I am a strong proponent of safety in schools, hospitals and the built environment as a whole. I believe that we should always consider seismic safety in the built environment.

I am interested in the Commissions publications being up to date (I currently chair the new revisions for the Commercial Property Owner's Guide), informative for the public and widely distributed. We are now able to distribute our publications via the web. We have recently released an updated Home Owner's guide in both English and Spanish. The Commission's "Loss Reduction Plan" is the model for the rest of the country and is considered by FEMA to be California's Master Plan for Earthquake Safety. I hope to continue work on these and related publications.

I am interested in working toward the implementation of "Earthquake Early Warning Devices" (P-wave technology) being placed in schools, hospitals and other buildings with large populations as well as implementing the technology where it provides critical systems protection for our structures. I have been working with the Coalition for Adequate School Housing (CASH) and holding discussions with the California Department of Education (CDE) regarding the implementation of early warning devices. As an architect, I am installing the first system in public education in California in special education classrooms in San Bernardino County.

APR 11 2006

I am a strong proponent of the Field Act and the Hospital Seismic Safety Act of 1994 (SB-1953 Alquist). I am also interested in the retrofit of older collapse hazard structures (especially schools) such as those identified in AB300 (Corbett 1999). The latter two legislative issues were Commission Sponsored legislation for which I had a part. I am interested in further investigations for schools identified in the AB300 DSA report and am working with CASH for future State general obligation bonding for this issue.

The Commission produced a number of seismically related suggested changes for California in 1995 with its publication "Turning Loss to Gain". Many of these issues have not been adopted, are still valid and therefore may have validity for consideration and implementation in California in the future. I propose the Commission revisiting these issues to see which might have a priority for California with respect to seismic safety and all hazards mitigation.

At the February 2006 Commission meeting, the United States Geological Survey (USGS) brought forth testimony that is potentially very disturbing for Californians. We may have a stock of relatively widespread mid to high rise buildings in some of our urban areas that may be in danger of partial or total collapse according to the USGS when these buildings are in the near source field of moderate to strong ground shaking. This is of special concern for buried faults in young anticlinal areas such as the Los Angeles basin. Most of the buried faults do not show on standard fault maps. I am urging the Commission to expand these hearings in the very near future with testimony from structural engineers so that we can determine the potential order of magnitude of the buildings that may be at risk. Some of these buildings hold thousands of people. Partial or total collapse of any one of these structures is a risk too great to go unnoticed.

#### **Funding Sunset for the Commission**

*Currently, the Commission is funded by an assessment on property insurance policies that is levied by the Department of Insurance. By statute this funding will end June 30, 2007. For all practical purposes, if the Commission does not secure funding for the 2007-08 budget year it must begin to shut down its operations, possibly starting the process this fall.*

As a concerned citizen of California and a member of the Commission, albeit unconfirmed by the Senate at this writing, I am very concerned with the very real possibility that the Commission may no longer exist on July 1, 2007. We are quickly approaching the 100<sup>th</sup> anniversary of the Great San Francisco Earthquake and subsequent fire. It would seem that we have learned little as a society if the State of California ignores its responsibility for seismic safety and allows the Commission to shut down. The reality is that the Commission may need to begin the shutdown much sooner than the fall of 2006 as mentioned in your letter. The country looks to California for leadership in seismic safety issues. It would be a shame if the Seismic Safety Commission were politicized rather than remaining an independent recognized body capable of providing unbiased counsel to the Legislature and Governor. I believe that we should consider seismic safety a necessity for California. It is my opinion that no Californian should need to question the future of the Seismic Safety Commission. Its future should be obvious for the benefit of all Californians.

#### **2. *What is the status of the Commission? Has a decision been made regarding its future?***

I would like to say that I know that the future of the Commission is secure. I would like to say that I am confident that an appropriate ongoing funding stream will be designated for the Commission. At this time, the Commission staff and some members of the Commission have been working with the Governor's Office to secure such funding. At this writing, this issue has not been resolved. I trust that the Governor's Office will provide an acceptable proposal for maintaining the Commission.

#### **3. *Are there discussions on changing the Commission from an independent body and transferring its functions to a State Agency? Do you believe such a transfer of functions would benefit the work of the Commission?***

Discussions on removing the Commission's independent status and placing it under agency control began in the middle 1990's. At that time, the Commission as a whole opposed such a move. The Legislature has created very few truly independent commissions. The Seismic Safety Commission and the Little Hoover



Commission are two of the most know independent commissions. The original move to delete the Commission's independent status was dropped in the mid-1990's.

Discussions with the Governor's Office have been recently reintroduced (late 2005) to the Commission and are currently ongoing regarding the future independence of the Commission. These discussions are currently being held with staff members to the Commission and select Commissioners and the Governor's Office. At this writing, no final decision has been brought to the Commission by the Governor's Office regarding the independent status of the Commission. Discussions have centered on the Commission remaining somewhat independent within an agency yet to be determined. The full understanding of the breadth of independence has not been introduced to the Commission. I fully expect that the Governor's Office will propose an acceptable course for the future of the Commission.

There are some aspects of agency support that could benefit the operations of the Commission. Staff resources could be augmented as could overall budget. If the independence of the Commission regarding expert testimony to the Legislature and Governor's Office is compromised by the move to agency, the Legislature, Governor's Office and California as a whole would suffer. For instance, various agencies have asked the Seismic Safety Commission in the past to carry a message of seismic safety because they had been forbid to do so by agency. AB300 (Corbett) is one such example. The Division of the State Architect (DSA) had long recognized the potential for older Field Act approved collapse hazard school buildings (non-ductile reinforced concrete for example). The DSA principal structural engineer and I authored an opinion paper in the *EERI Spectrum* in 1999 that helped get AB300 into legislation. DSA had not been allowed to champion the AB300 study under agency control. The Commission's independence allowed the Legislature to learn of the potential problem from which the legislation was finally passed in 1999.

I believe that any move for agency control of the Commission should be organizational only and should keep the independence of the Commission intact. I believe that it is the best course for Seismic Safety in California to keep the Commission as an independent body of experts free to express their opinions on Seismic Safety even when it is unpopular to do such. The move for the successful passage of AB300 was such an example.

#### Earthquakes in Non-Urban Areas

*Last year, the Department of Water Resources made presentations to three committees on the effect of an earthquake in the Sacramento-San Joaquin Delta. In a mid-level scenario with a 6.5 magnitude earthquake, the department estimated the drinking water supply to 22 million Californians would be severed. This water supply supports a \$400 billion economy. Also affected would be highways, railroads, power distribution corridors, deep water ports, and natural gas and oil pipelines. The department estimated the cost to California's economy would be \$30 to \$40 billion dollars in the first five years, and a total job loss in excess of 30,000.*

4. *Has the Commission studied how earthquakes in non-urban areas, such as an earthquake in the Delta, could affect the State? Have plans been developed to mitigate the effects of an earthquake in the Delta for levee failures, broken pipelines, or the severing of the water supply to Southern California?*

The Seismic Safety Commission addresses the need for stabilized levees in its *Loss Reduction Plan* provided to the Legislature.

In the late 1990's, the Seismic Safety Commission conducted hearings on the status and condition of the San Joaquin Delta levee system. Our initial concern was for the vulnerability of the levees in a moderate to strong earthquake. The Commission learned that some of the levees are in grave condition. Some levees have been in place for approximately 100 years. Due to the nature of the subsurface soils in the Delta area (high organic content soils) many of the levees are in imminent danger of failure, not only due to earthquake, but due in part to their own weight. Some of the levees are undergoing accelerated in place subsidence due to the compression of underlying organic materials. In place failure without an earthquake is a concern. A moderate earthquake could create wide spread levee failure with dramatic consequences



for California. The condition of California's levees has long been a concern of the Commission. The 1990's hearings did not result in a formal publication, but rather provided an awareness for inclusion within its *Loss Reduction Plan* that is provided to the legislature. This winter has again shown the vulnerability of our levee system with the recent localized failures.

At the February 2006 Commission hearing, the USGS brought the Commission information on its concern for rupture along the southern section of the San Andreas Fault. The area of concern is roughly from Ft. Tejon 60 miles north of LA then trending south east to the Mexican Border. Most of this section of the fault traverses relative non-urban lands. The exception being where the fault exits the Cajon Pass and forms the southern face of the San Bernardino Mountains. In this section, the fault is adjacent to San Bernardino. This southern leg of the San Andreas Fault has numerous necessary infrastructure crossing it including surface arterials, transmission lines, railroads, aqueducts and oil/gas lines. A significant rupture along this segment of the fault could result in excess of twenty foot of ground offset significantly disrupting the aforementioned infrastructure. The impacted area would encompass thousands of square miles. This is a regional earthquake that California has not experienced in modern times. The economic impact will be crippling. Deaths and injuries could be larger than any we have ever seen in California before. California has been lucky for the past one hundred years in that we have not had any regional earthquakes. We have experienced "neighborhood" earthquakes in our recent past. A regional earthquake in this non-urban area of California will nonetheless dramatically affect all of California, not just Southern California. I believe that this is a concern of most if not all of the Commissioners.

### Seismic Retrofit of Bridges and Overpasses

*Since 1989 the State has seismically retrofitted roughly 2,200 bridges and overpasses at a cost of \$2.4 billion. There are, however, as many as 500 bridges and overpasses that have been identified as being at the highest risk of collapse in a major earthquake. These bridges and overpasses are maintained by cities and counties and have not been seismically retrofitted.*

5. *What actions has the Commission taken to highlight the need for seismic retrofitting of the 500 bridges and overpasses maintained by local governments?*

The Commission's "Loss Reduction Plan" addresses the bridges of concern. The plan identifies up to 1200 city and county bridges. The plan also identifies that almost none of these retrofits have been completed. There are however some exceptions to this. The Colorado Street Bridge in Pasadena is one such example. The seismic retrofit has been completed on this beautiful historic structure. The State Historical Resources Commission Chairman has expressed concern for some of the proposed retrofits of historically significant bridges in the Los Angeles area (personal conversations with Luis Hoyos, AIA, Chairman). To the best of my knowledge, no city or county has asked the Seismic Safety Commission for assistance regarding these bridges. I personally serve as the Seismic Safety Commission's liaison to the State Historical Resources Commission.

6. *Bond bills (AB134 and SB1024) pending before the Legislature include funds for this retrofit program. Do I, or does the Commission, have a position on this component of these bills?*

At this writing, the Commission staff has not presented these bond bills formally to the Commission for action. The Commission has historically supported most general obligation bonds where seismic safety is improved by the bond expenditures.

### Tsunamis

*Damaging tsunamis are rare but potentially catastrophic events that present a danger to the people and economy of California. Over 80 tsunamis have been observed or recorded along the coast of California in the past 150 years, nine causing minor damage in ports and harbors and two with major impacts. Four events caused deaths; the worst occurred in 1964 when 12 people died in California from the tsunami generated by the Great Alaska Earthquake. Local earthquakes can produce damaging tsunamis that will provide very little warning time.*

7. *Does California have an adequate tsunami warning system? How could the current warning system be strengthened?*

The Seismic Safety Commission took testimony on the tsunami hazard in California in the mid to late 1990's. No report was produced by the Commission from these early hearings. The Seismic Safety Commission conducted hearings and produced a report on tsunami in 2005 following the great Sumatra Earthquake in December 2004. That report has had a tremendous number of downloads from the Commission web site due to the current interest in tsunami.

California does not have a State sponsored comprehensive coastal tsunami warning system. Tele-tsunami (tsunami generated by a distant earthquake or subsurface gravity slide) warning is achieved by the mid-ocean system administered by the federal government. Tele-tsunami alerts are generally fairly effective along the California coast. Even in the 1964 tsunami in Crescent City, there was ample warning. The deaths occurred due to individuals venturing into the inundation area after the admonishment of officials to keep clear of the low lying areas. Local government has the responsibility for tsunami evacuation due to a tele-tsunami. Evacuation routes could be better posted. Evacuation drills could be practiced. Telephone books could contain tsunami information (such comprehensive information as is found in Hawaii phone books). Unfortunately, tsunami evacuation route signs are popular targets for petty thieves.

Local tsunami warning is a much different problem. Warning may be ineffectual due to the time constraints. A near coast event such as along the Off Shore Zone of Deformation (extension of the Newport-Inglewood Fault) offshore of Orange and San Diego counties might have less than a minute of warning before inundation. Additionally, some coastal areas such as Balboa Island could experience devastating liquefaction to the point that the island partially slips below sea level. Clearly, no warning system will be useful in such an event. Even early warning systems such as P-wave recognizing instruments which provide warnings prior to strong ground motion of seconds will not be useful in this localized situation.

While we talk extensively about tsunami, we also need to be mindful of seiche (oscillations of bodies of water in enclosed bays or basins such as dams and lakes). San Francisco Bay is subject to such events that could significantly impact our shore and wharves. Dams could be topped leading to widespread flooding below the dam.

One area that has received very little attention in tsunami research is undersea gravity slides due to unstable subsurface sediments. For millennia, California rivers have been dumping sediments along the coastal shelf from major rivers. Some of these sediments sit precariously along the edge of the continental shelf and steeply sloped shelf canyons. In addition to this, our continental shelf may contain layers of methane hydrates which if they are of sufficient thickness and widespread could also pose a problem. Many continental shelves around the globe contain these. Methane hydrates have fuel potential. Methane hydrates have the consistency of sherbert. With this consistency, they can not support great loads if they have any thickness. At some point in time, we may experience a very large undersea landslide that may or may not have its genesis in an earthquake. The sudden release of undersea sediments in a gravity slide could pose a significant tsunami type problem for our coastline, especially for the Southern California coastline. No significant studies have been undertaken on the vulnerability of California's coastline due to methane hydrate release or more normal subsurface gravity sediment slides. Waves generated by such events could be very large (potentially more than 100 ft in height).

8. *Do current building codes take into account the threat of tsunamis? Has the Commission made recommendations on upgrading the building code to take tsunami into consideration?*

As an architect, I have found no reference to anti-tsunami design in either the base model code (1997 UBC) or the California adopted version of the model code (2001 CBC). There are no tsunami inundation maps as there are for wind or seismic zones in the codes. Local agencies are allowed to pass provisions for tsunami design as augmentations to the model code, however, I personally am unaware of any such local provisions. There are design considerations for tsunami design such as walls that are designed to fail under excessive water pressure thereby preventing building collapse. This design philosophy is somewhat akin to

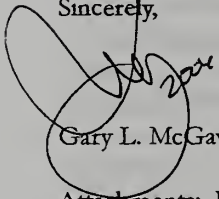


"crumple zones" in automotive design or the commonly used "dog bones" recently employed in some steel moment frame buildings due to the moment frame failures found following the 1994 Northridge Earthquake.

It is generally not the charter of the Commission to make recommendations for code augmentation. This function is reserved for professional organizations such as SEAOC. The function of the Commission would be to provide testimony to the Building Standards Commission using the appropriate Commissioner or Commission staff member. The Building Standards Commission has received copies of the Commission's Tsunami Report. The Commission works closely with the Building Standards Commission during the code process providing appropriate testimony. I personally have provided such testimony during my previous tenure on the Commission.

I appreciate the opportunity to provide answers to the Senate Rules Committee regarding my views as a Seismic Safety Commissioner. I am enthusiastic about serving on the Commission again. I hope to maintain the trust of the Legislature and the Governor as well as the citizens of California in this important position. I do hope to be confirmed by the Senate on April 26, 2006. Please feel free to call me if you have any questions or require any additional information.

Sincerely,



Gary L. McGavin, AIA

Attachments: Resume and Revised Statement of Economic Interest, Form 700

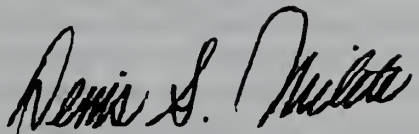
cc: Governor's Appointments Secretary w/o attachments  
Richard McCarthy, Seismic Safety Commission w/o attachments  
Kurt Cooknick, AIACC w/o attachments

**TELEFAXSIMILE TRANSMISSION**

(A Total of 6 Pages is Being Transmitted)

**TO:** Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 482, State Capitol  
Sacramento, CA 95814  
Tel: 916-651-4151  
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**FROM:** Dennis S. Milet, Ph.D.  
1 Ridgeline Way  
Rancho Mirage, CA 92270  
Tel: 303-520-3400  
Fax: 760-321-8027 (call first to request that fax be turned on)



**DATE:** April 11, 2006

**SUBJECT:** Reply to Questions Posed by Don Perata, Chairman, Senate Rules Committee, in the Matter of a Hearing Regarding My Appointment to the Seismic Safety Commission

**Statement of Goals**

**Question 1.** What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? What goals do you have for the commission and how will you accomplish them?

**Answer 1.** I am thrilled to have been appointed to the Seismic Safety Commission, and I have considered what objectives would be worth the time that I spend as a commissioner. So far, I have identified several broad goals that I define as worth being pursued. I doubt that I would be able to accomplish any of them alone. Consequently, the strategy I would use to achieve them is to develop these ideas with others, increase the number of people, e.g., other Commissioners and Legislators, who define them as their own, and, thereby create a demand among others that they be fulfilled.

**Match Efforts and Funds to Risks.** Ours is one of the most, if not the most, hazardous state. I plan on working to impact how we organize for and fund preparedness and mitigation such that it is appropriately innovative and sized to match our risks.

**All Hazards Insurance.** We can not adequately fund mega-disaster losses without an appropriately sized can reserve; and sufficient incentives are not in place to facilitate citizen loss reduction commensurate with the risks faced. All hazards insurance can assist with both needs, and I support the development



of such a program. But to achieve both goals, the program should require participation, have premiums that are risk based, and premiums should be adjusted downward contingent on the adoption of mitigation actions. The entity that offers the program should be required to do more including partner with others to "effectively" educate citizens, and participate in the model building code process.

Sufficient and Stable Funding. There is a need for funding for preparedness and mitigation in our state that is sufficient and stable over the long-haul. Funding is needed for both actions and oversight.

Comprehensive and Innovative Preparedness. I see a need to require local governments to have "comprehensive" planning, and to support them with technical assistance and funds to develop, update, and exercise those plans. We need to increase professionalism through plan certification and gradually phase-in education requirements for emergency management professionals. We need to adopt plans for mega-disasters that take steps to develop and use citizen victims as first responders and as self-responders. We need to recognize the gaps that come from top-down/command and control approaches, and fill the gaps that such approaches produce.

Expert Oversight. The state should carefully select and permanently fund expert oversight to match mitigation and preparedness activities and policies to changing risks through the use of an appropriate mix of topic-specific experts.

Leverage Resources in Ways that Work. The state should organize and fund a program somewhat like Project Impact that was once operated by the Federal Emergency Management Agency to leverage private sector funds and increase local community preparedness and mitigation.

Public Education that Yields Public Actions. We need to fund and conduct an informed, multi-pronged, and ongoing public education and information campaign that fosters citizen "actions" to prepare and mitigate their losses. This program should involve partners, be routinely evaluated and adjusted to take results and lack of results into account, and be based on state-of-the-art knowledge about what makes such a program effective.

### **Funding Sunset for the Commission**

Question 2. What is the status of the commission? Has a decision been made regarding its future?

Answer 2. The Commissioners voted unanimously to keep the Seismic Safety Commission independent. Since last December, Commissioners and legislative and Commission staff have had three meetings with representatives of the Governor's Office to discuss the Administration's concerns regarding the Commission. After the last meeting in early March, Commission staff and legislative staff from Senator Alquist's and Assembly member Liu's offices prepared a written summary of agreed on points and sent it to the Administration on March 7th. The Administration indicated that a written response to the summary would be prepared—including some proposed statutory amendments to include in SB 1278 (Alquist). To date and to the best of my knowledge, this

response has not yet been received by either the Commission, or the offices of Senator Alquist or Assembly member Liu. In brief, and to the best of my knowledge, the current status of the Commission is that it will begin closing down shop in a few months, and a decision regarding its future has not been reached.

Question 3. Are there discussions on changing the commission from an independent body and transferring its function to a state agency? Do you believe such a transfer of functions would benefit the work of the commission?

Answer 3. The Administration is interested in changing the status of the Commission from its current independent structure to being housed in an existing state agency, e.g., the State and Consumer Services Agency. The Administration has stated that this change would still provide the Commission with independence to access the Legislature, sponsor its own legislation, and take positions on legislation introduced by others. Were this change to occur, the Commission would access the Governor through the Cabinet Secretary's office for the agency in which the Commission would be housed. But it is not clear how this arrangement would function.

It is my opinion that the proposed change would significantly detract from ability of the Commission to enhance seismic safety for the people of the State of California. My opinion is based on my experience as a social scientist who is familiar with the research record on natural hazards mitigation and organized disaster response in our nation; and is also informed by the experience I gained as director of our nation's national repository (the Natural Hazards Center on the University of Colorado at Boulder's campus) for social science research knowledge related to natural hazards mitigation and preparedness. In brief, natural hazards management faces an uphill battle except, perhaps, in the immediate aftermath of disasters. The Commission is able to accomplish much in the battle for seismic safety in the State of California because: (1) its independence enables it to be an advocate in-between disasters, (2) its opinions regarding seismic safety concerns are developed independent of the more routine daily political concerns that determine political actions and inactions, (3) its seismic safety objectives do not have to be cleared through an agency or an administration before they are expressed, (4) it is able to make its opinions directly known to the Legislature, and (5) its opinions are informed by the interdisciplinary character of its Commissioners. The California Seismic Safety Commission is know throughout the nation, and perhaps the world, as one of the most successful (if not the most successful) vehicles for natural hazards mitigation. Its current independent structure greatly contributes to its accomplishments.

Some, and I am among them, are of the opinion that the present Presidential Administration's re-structuring of the Federal Emergency Management Agency (FEMA) from an independent agency to housing it in the Department of Homeland Security has detracted from FEMA's ability to do its work. It would be a mistake to make a similar re-structuring shift in California with the Seismic Safety Commission.



Another pressing need exists regarding the Commission. It now requires a funding source by the end of this fiscal year. The Commission will soon begin the process of closing shop if a funding source is not established by the Legislature very soon. It is not in the interest of the people of the State of California to eliminate the Seismic Safety Commission, nor to constrain its ability to serve the seismic safety interests of the people by re-structuring its ability to articulate policy and opinions based on anything other than seismic safety concerns.

California is the most hazardous state in the United States. Most of the losses we have experienced in the past are from earthquakes. The largest risks we face in our future are from earthquakes. The largest natural disaster in our nation's future is a great earthquake in our state. It is a mistake to not fund the Commission, and it is another mistake to constrain the ability of the Commission to do its work through a re-structuring.

### **Earthquakes in Non-Urban Areas**

**Question 4.** Has the commission studied how earthquakes in non-urban areas, such as an earthquake in the Delta, could affect the state? Have plans been developed to mitigate the effects of an earthquake in the Delta for levee failures, broken pipelines, or the severing of the water supply to southern California?

**Answer 4.** I have been informed that some work on this topic was done several years ago, before I joined the Commission, but that this work did not result in a formal product. More work on this topic is clearly needed. In general, the topic of secondary hazards (those that stem from the occurrence of a primary hazard event) and their associated losses are under-studied in our nation and state. Relatively recent evidence exists to suggest that ever increasing proportions of total losses after earthquakes are attributable to secondary and even tertiary level losses. The general trends of ever increasing levels of societal specialization and interdependence, coupled with our aging infrastructure make us much more prone to larger and systemic disaster losses. To the best of my knowledge, the Commission has not yet adequately studied how earthquake in non-urban areas could affect the state, nor have adequate plans been developed to mitigate their local and systemic impacts.

### **Seismic Retrofit of Bridges and Overpasses**

**Question 5.** What actions has the commission taken to highlight the need for seismic retrofitting of the 500 bridges and overpasses maintained by local governments?

**Answer 5.** As I have stated above, increasing recent research evidence suggests that ever increasing proportions of losses after earthquakes are attributable to systemic losses, e.g., lost business dollars because workers can not commute to work in undamaged businesses from undamaged homes because part of a major highway that is needed to commute between the two has failed or because electricity is not being delivered to those undamaged businesses. Consequently, a failed local bridge that prohibits commutation after an earthquake can quickly impose a set of systemic impacts that extend far

beyond the local community that contains the failed bridge. In this way, the failure of a local bridge or overpass can quickly yield broader than local impacts and become a state problem. The State of California needs policies and programs to reduce the systemic impacts of earthquakes. There is much work for the Commission to do to address this issue. This work involves policy needs to enhance the seismic retrofit of the bridges and overpasses maintained by local governments and many other source of systemic earthquake losses.

Question 6. Bond bills (AB 134 and SB 1024) pending before the Legislature includes funds for the retrofit program. Do you, or does the commission, have a position on this component of these bills?

Answer 6. I have only recently joined the Commission and I do not know we have a position on state funding for this proposed retrofit program. I would, as an individual, support state funding for a retrofit program because of systemic losses that can flow from local bridge and overpass failures.

### Tsunamis

Question 7. Does California have an adequate tsunami warning system? How could the current warning system be strengthened?

Answer 7. California is far from having a tsunami warning system that would work. We would loose many lives and experience dramatic economic losses were a dangerous tsunami to hit one of our populated coastal communities anytime soon.

Prior to retiring as a professor, I spent most of my career researching public warning systems for natural disasters, and how to effectively communicate risk information to an endangered public such that endangered people would take appropriate and timely protective actions. I am sorry to report that almost all of the essential ingredients for an effective warning system capable of generating timely public protective actions in the face of a tsunami are currently missing in the State of California.

Warning systems that work to save lives include multiple components. These are adequate public education, event detection, inter-organizational and jurisdictional communication and preparedness, public alert, and the effective dissemination of appropriately worded public warnings. More work is needed in California on each of these warning system components.

The Commission has recently issued an excellent report on needed actions to bring adequate tsunamis warning systems into existence in our state. Recommendations include improved public education, preparedness materials, expert review of current tsunami warning protocols by tsunami detection agencies, and support for efforts to provide tsunami mitigation programs in coastal counties and in the Office of Emergency Services for enhanced communication and emergency preparedness.

Question 8. Do current building codes take into account the threat of tsunamis? Has the commission made recommendations on upgrading the building code to take tsunamis into consideration?



Answer 8. Current building codes do not take the impact of tsunamis into account. Moreover, existing tsunami inundation maps are not applicable for building code development. Several items are needed for building code development that would take the tsunami hazard into account. First, the state needs to support the development of tsunami hazard maps that are appropriate for building code and land use regulations. Second, continued work with federal agencies is needed to develop guidelines for structures to resist tsunami impact.

Nettie Sabelhaus  
 Rules Committee Appointments Director  
 Room 420, State Capitol  
 Sacramento, CA 95814  
 Attention: Nettie Sabelhaus,

Re: Seismic Safety Commission Appointment

### 1) Statement of Goals

As a member of the Seismic Safety Commission I hope to work with the other commissioners and heighten the public's awareness and preparedness as it relates to a seismic event in the State. I hope to utilize my years of first responder and Urban Search and Rescue experience combined with the many other talents distributed throughout the composition of the commission to better prepare the state's local and state wide first responder and emergency management resources for a seismic related event. While our state's emergency resources are of the highest caliber, faced with a disaster of the magnitude recently experienced in the south with Katrina our response capabilities would not be sufficient in their present state.

### 2 -3) Status and future of the Commission

You asked about the status of the Commission and decisions about its future. The Commission initially voted unanimously to advocate retaining its present standing and organization. Since December 2005, Commissioners, staff, legislative staff and I have held meetings with representatives of the Governor's Office to discuss the Administration's concerns. The Administration has inquired about the prospect of re-positioning the Commission so that it would access the Governor's Office via a Cabinet Secretary's office (presumably the State and Consumer Services Agency Secretary). At a March 6 meeting, the Administration suggested that the re-positioning could be accomplished without any changes to the Commission's independence to access the Legislature, take positions on legislation, or sponsor its own legislation. The Commission has received a written correspondence from the administration recommending bringing the commission under Consumer Services as an independent Commission, as well as some composition changes. The Commission has been told that bringing the commission under an Agency would not effect our ability to act independently. Currently as an independent Commission we have the ability to report and testify freely without restraint. While there may be instances when we are not in agreement with the administration, there is nothing other than the possibility of political consequence for doing so. I feel that under an agency, provided we are an independent commission this does not change. What does change is our ability to utilize the Agency Secretary when we are in agreement with

APR 12 2006

the administration. In the short time I have served, I see this as a huge and much needed resource for the Commission. Seismic Safety is a key issue that should have the attention and resources of the Administration

This said, I think it is vital that in the reorganization of the Commission in what ever form it takes, the commission must maintain its independent nature. The people of California deserve to reap the benefits of all of the work of the commission. Any form of editorial control to a watchdog commission such as this renders it useless. It is inevitable that there is change in the future of the Commission. It is our duty as Commissioners to actively participate in the change and ensure that we are moving forward to further enhance our ability to make the State of California safer for its residents.

It is critical that the Legislature establish a funding source for the Commission by the end of this fiscal year. We are pushed against a timeline that forces us to consider an emphasis on demobilization rather than progression in the near future if this funding is not secured in a timely fashion.

#### **4) Earthquakes in non-urban areas**

The Commission identified the Delta Levees as vulnerable to earthquakes since the early 1990's. Specifically, this issue was cited in the Commission's California at Risk document and then again in the California Earthquake Loss Reduction Plan. The Commission held hearings on the delta levees in the mid 1990's and, based on testimony given at those hearings, added the seismic vulnerability of the levees and water delivery systems to our plan.

The Commission has not done detailed studies on the delta levee system. The Department of Water Resources has the lead on this issue.

The Commission has not given priority to non-urban areas, such as farmland, in its efforts to reduce earthquake losses. It has worked with smaller local governments regarding their efforts to retrofit or tear down un-reinforced masonry buildings. This is reflected in our report to the legislature every year on the status of un-reinforced masonry law.



### **5) Seismic retrofitting of bridges and overpasses.**

The lack of retrofitting of county and local bridges is part of a larger problem of retrofitting requirements of all types in local government. So much of California's infrastructure and public buildings were built before the 1971 earthquake demonstrated the failings of many of our construction techniques that California's local governments have a huge investment in substandard (by today's standards) buildings and other structures. Tackling the full problem is then beyond the means of the local government. Afraid of the liability from seismic risk, they respond by ignoring it all. When they do not fix their own problems, they are in no position to encourage responsible action from their businesses and other private citizens. California is in need of innovative policies that can encourage the use of modern knowledge about the risk to improve our resiliency without encouraging avoidance through fear of liability.

### **6) Bond Bills**

The Commission staff is preparing bill analyses of AB 134 and SB 1024 for Commissioners' review. While the Commission may take and publish a formal position on the bills in the near future, the Commission does not have a formal approved position at this time.

### **7) Tsunamis**

At this time the tsunami warning system in California has not achieved all of its objectives with problems that include communications, agency co-ordination and protocols. Since the December 2004 Sumatra tsunami and the June 14, 2005 tsunami warning in northern California the Governor's Office of Emergency Services (OES) and many local governments have been proactive in addressing the State's tsunami risk.

Recommendations for strengthening the current warning system are as follows:

1. Improve tsunami education to all California schools and coastal populations.
2. Update tsunami preparedness materials and develop multi-language education materials to be made available in the workplace (especially ports) and coastal areas.
3. Work with other coastal states to obtain an external expert review of NOAA tsunami criteria for issuing and canceling warnings.
4. Support efforts to provide tsunami mitigation programs in coastal counties and in OES, including improvements to the communications and emergency response systems.

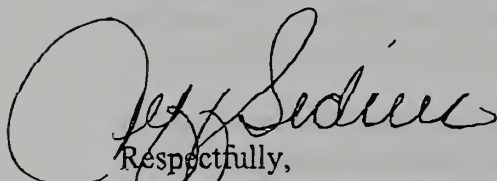


### 8) Building Codes for Tsunamis

Present building codes and guidelines do not address the impact of tsunamis on structures. Currently available tsunami inundations maps are not appropriate for code or guidelines applications.

Recommendations on upgrading the building code to take tsunamis into consideration are as follows:

1. Continue to work with federal agencies to develop guidelines for structures to resist both strong round motion and tsunami wave impact.
2. Support efforts to develop tsunami hazard maps appropriate for building code and land-use regulations.



Respectfully,  
Jeff Sedivec

**Keith M. Wheeler**  
 4643 Placidia Avenue  
 Toluca Lake, California 91602  
 Home (818)980-2736 Work 818-980-2737  
 Fax: 818-760-1824  
 keithmwheeler@pacbell.net

April 11, 2006

Ms. Nettie Sabelhaus  
 Director  
 Rules Committee Appointments  
 State Capitol, Room 420  
 Sacramento, California 95814

Re: Confirmation Hearing Responses (4/26/06)  
 California Seismic Safety Commission

Dear Ms. Sabelhaus:

Thank you for the opportunity to express my thoughts and feelings about my work on the California Seismic Safety Commission (CSSC). As a former and current Commissioner, I am proud of my contribution and those of my fellow Commissioner's both present and past and the CSSC staff to the *California Earthquake Loss Reduction Plan (Plan)*. I believe the initiatives set forth in the *Plan* provide an excellent roadmap towards a comprehensive seismic hazard mitigation strategy for the State of California.

#### Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? What goals do you have for the commission and how will you accomplish them?*

The State of California is literally moving constantly. We experience over 20,000 earthquakes each year. I see the CSSC as a group of dedicated individuals using their knowledge and expertise to save lives, reduce injury and protect the property of California's citizens. I believe there are two critical cornerstones to success: (1) public awareness as to the threat and danger of earthquakes and (2) preparedness for all of California's citizens.

APR 12 2006

Ms. Nettie Sabelhaus  
April 11, 2006  
Page Two

During my tenure, I hope to continue to increase public awareness of the consequences of earthquakes, which may result in disasters such as tsunamis, floods, levee and dam breaks, wildfires and landslides. Towards that end, I would urge continued development of an expanded "threat" awareness campaign as a means to encourage each citizen to be better prepared in the event of a disaster.

Such a campaign could build on many of the initiatives set forth in the *Plan*, including publicized hearings, media outreach, multi-language teacher training and public service announcements. To achieve continued results, partnerships with other like-minded organizations should be expanded, and we should continue to involve experts and public officials to speak at public forums, townhalls, local homeowners associations, and schools.

Unfortunately, we can't predict and we can't prevent earthquakes ... we can only prepare.

A recent study indicates that only 22% of California's citizens are prepared for a disaster. Hurricane Katrina demonstrated that citizens' must prepare at home as government help can be stretched thin.

As an instructor of earthquake preparedness for the American Red Cross for the past 13 years, I have taught a cross-section of California's citizens from major corporations, small businesses, neighborhood associations, schools and civic groups to senior citizens homes.

Continued communication with our citizens to maintain awareness of community preparedness resources available to them such as the American Red Cross centers and sites; LA City Fire Department's Community Emergency Response Team (CERT) program (a program that teaches citizens First Aid and Search and Rescue skills at locations throughout the State); the state Office of Emergency Services field offices; and Neighborhood Watch programs.

Through an enhanced proactive campaign for awareness and preparedness, California will set the standard for saving lives, reducing injuries and protecting property from natural and man-made disasters.

### **Funding Sunset for the Commission**

#### ***2. What is the status of the commission? Has a decision been made regarding its future?***

Currently the status is that our funding will run out by June 30, 2007 as the bill, AB 1374, to continue our funding was vetoed last year.



Ms. Nettie Sabelhaus  
April 11, 2006  
Page Three

It appears that the only viable option for funding beyond the sunset date at this time is to transfer the CSSC's functions to a state agency where funding and support for earthquake mitigation programs would be available.

***3. Are there discussions on changing the commission from an independent body and transferring its functions to a state agency? Do you believe such a transfer of functions would benefit the work of the commission?***

Given the recent worldwide scope of natural disasters such as the Loma Prieta Earthquake, Northridge Earthquake, 9/11, the Sumatra Earthquake/Tsunami and Hurricane Katrina, the continuation of funding of the CSSC is critical for providing California's citizens protection whether we are an independent body or part of a state agency.

It is my hope that the CSSC will continue to have independent access to the Legislature, be able to take positions on legislation and be able to sponsor our own legislation in order to accomplish our goals. The focus must remain on saving lives, reducing injuries and protecting the property of California's citizens.

#### **Earthquakes in Non-Urban Areas**

***4. Has the commission studied how earthquakes in non-urban areas, such as an earthquake in the Delta, could affect the state? Have plans been developed to mitigate the effects of an earthquake in the Delta for levee failures, broken pipelines, or the severing of the water supply to Southern California?***

Earthquakes in non-urban areas such as the Delta could have a disastrous impact on the State. In the mid 1990's, the CSSC held hearings on the Delta levees. As a result of those hearings, seismic vulnerability of the levees and water delivery systems were identified in the *Plan*.

The Department of Water Resources has conducted studies regarding seismic hazard assessment in the Delta and has shared their findings with the CSSC. Nonetheless, the full extent of the seismic hazard has not yet been fully determined.

To date, an assessment by the CSSC with regard to the disruption of feeding water from the Delta to Southern California has not been made. Particularly in light of the Governor's Emergency Declaration of yesterday for seven counties in the central valley due to severe rain and flooding and the devastation from Hurricane Katrina, I know of no higher priority than moving expeditiously to shore up and replace weakened levees and dams.



Ms. Nettie Sabelhaus  
 April 11, 2006  
 Page Four

## Seismic Retrofit of Bridges and Overpasses

### **5. *What actions has the commission taken to highlight the need for seismic retrofitting of the 500 bridges and overpasses maintained by local governments?***

The CSSC's *Multi-hazard Mitigation Plan* compiled in 2004 identified 1100 local bridges needing seismic retrofits. As of 2001, 500 bridges had been retrofitted. The plan estimated costs for retrofitting local bridges at approximately \$1 billion. Nearly 600 locally-owned bridges remain vulnerable as of March 2006.

For the past five years, the CSSC has consistently been committed to underscoring the importance of retrofitting bridges and overpasses:

- In 2001/2002, a representative of the CSSC advised the Bay Area Rapid Transit District of our concerns during an independent review of its seismic retrofit project of bridges.

- In June 2002, the CSSC was briefed on CALTRAN'S Seismic Bridge Details Development Program, which included data from testing of parts of bridges and retrofitted connections.

- In 2003, the CSSC reviewed progress by the Pacific Earthquake Engineering Research Center, which includes a major bridge research component.

- In 2004, the CSSC adopted the state's earthquake research plan that included specific measures that will benefit bridge seismic safety.

Because of the potential negative economic impact and societal disruption and personal danger, it is important to continue to emphasize the need to retrofit our overpasses and bridges.

### **6. *Bond bills (AB 134 and SB 1024) pending before the Legislature include funds for this retrofit program. Do you, or does the commission, have a position on this component of these bills?***

The SCC staff is currently preparing bill analyses of AB 134 and SB 1024 for the Commissioners' to review at a future meeting. While the CSSC may take and publish a formal position on the bills in the near future, we do not have a formal approved position at this time.

Ms. Nettie Sabelhaus  
 April 11, 2006  
 Page Five

## Tsunamis

### ***7. Does California have an adequate tsunami warning system? How could the current warning system be strengthened?***

The Sumatra earthquake of December 2004 illustrates the catastrophic risk that tsunamis pose to human life and the need for more accurate and early detection.

Currently, the tsunami warning system in California has not achieved all of its objectives with problems that include communications, agency coordination and protocols. Since the Sumatra tsunami and the June 14, 2005 tsunami warning in Northern California, the Governor's Office of Emergency Services (OES), in conjunction with local governments, have been proactive in addressing the State's tsunami risk.

Recommendations for strengthening the current warning system include:

- (i) improving tsunami education to all California schools and coastal populations;
- (ii) updating tsunami preparedness materials and developing multi-language education materials for the workplace (especially ports) and coastal areas; (iii) working with other coastal states to obtain an external expert review of NOAA tsunami criteria for issuing and canceling warnings; (iv) supporting efforts to provide tsunami mitigation programs in coastal counties and in OES, (v) including improvement to the communications and emergency response systems; and (vi) installing more ocean sensors and beach alarms.

### ***8. Do current building codes take into account the threat of tsunamis? Has the Commission made recommendations on upgrading the building code to take tsunamis into consideration?***

Unfortunately, present building codes and guidelines do not address the impact of tsunamis on structures. Currently available tsunami inundations maps are not appropriate for code or guidelines applications.

Recommendations for upgrading building codes to take tsunamis into consideration include: (i) continuing to work with federal agencies to develop guidelines for structures to resist both strong ground motion and tsunami wave impact; (ii) supporting efforts to develop tsunami hazard maps appropriate for building code and land-use regulations with special emphasis on coastal communities; (iii) enforcing ordinances to require welded steel metal frame buildings to repair or replace all joints connecting beams to columns; (iv) requiring installation of seismic gas shut off valves on all properties, new and old; (v) requiring retrofitting of under story of wood frame residential buildings with weak crippled walls and unbolted sill plates; and (vi) enforcing ordinance requiring retrofitting of all un-reinforced masonry bearing walls.

Ms. Nettie Sabelhaus

April 11, 2006  
Page Six

I sincerely appreciate your consideration of my appointment to the Seismic Safety Commission.

Sincerely,

A handwritten signature in cursive script that reads "Keith M. Wheeler". The signature is written in dark ink and is positioned above the printed name.

Keith M. Wheeler

## CALIFORNIA LEGISLATURE

## MEMBERS

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NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

**SENATE RULES COMMITTEE**

DON PERATA  
CHAIRMAN

March 22, 2006

John H. Hayashi  
2460 Gracie Way  
Arroyo Grande, CA 93420

Dear Mr. Hayashi:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Central Coast Water Quality Control Board on Wednesday, April 26, 2006. You are not required to appear.

We would like to receive an updated Form 700, Statement of Economic Interest, by April 14th. A copy of the statement you submitted to us earlier is enclosed so that you might review it for any changes that might have occurred. If there are no changes to the statement, simply let us know.

Following are questions we would like you to respond to in writing so that members of the Rules Committee may be better informed about your work on the board. Please have this information in our office by the close of business on April 14th. If you prefer, you can fax your responses to us at (916) 445-0596.

**Statement of Goals**

1. *What do you hope to accomplish during your tenure as a member of the Central Coast Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

**State and Regional Board Roles**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.



2. *Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*
3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. Regional board budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board, instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*
5. *Do you believe the central coast regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

## **Water Quality Permitting**

The federal and state clean water acts require permits to discharge pollutants from storm water. In the past these permits have imposed best management practices on dischargers, under the assumption that the use of those practices will result in water quality improvements. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*
8. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

### **Enforcement of Water Quality Laws**

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

In 1983 the board adopted a prohibition on waste discharge from septic tanks in the most densely developed areas of Los Osos and Baywood Park. In 2000 the board adopted a time schedule for the Los Osos Community Services District to develop and construct a community sewer system for the Los Osos and Baywood Park areas. In January 2006 the central coast regional board was notified that board staff was in the process of drafting cease and desist orders for residents who are discharging from septic systems.

9. *What is the status of the enforcement actions against the Los Osos and Baywood residents and property owners? Have cease and desist orders been issued? What is the status of the enforcement action against the Los Osos Community Services District?*
10. *What enforcement options do you believe provides the most effective tools for long-term violations of board orders?*
11. *Why did it take 23 years for the enforcement of the board's order to rise to the level of issuing cease and desist orders?*

### **Water Quality Monitoring**

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other



water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

12. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

### **Cleanup of Polluted Waters**

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and total maximum daily load programs.

Currently regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

13. *What schedule currently exists at the central coast regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the central coast regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*
14. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

### **Perchlorate**

When previous Central Coast Regional Water Quality Control Board members came before the Rules Committee, they discussed a perchlorate plume that stretch seven miles from Morgan Hill to the outskirts of Gilroy. At that time a number of drinking water wells had to be taken out of production because of the perchlorate contamination. Several of the drinking water wells the city of Gilroy uses were in the path of the expanding plume.

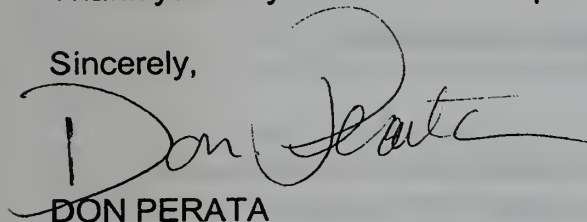
Since then, a number of Cleanup and Abatement Orders have been issued that have required cleanup and remediation of perchlorate contamination. The orders also included requirements for the dischargers to supply uninterrupted replacement water to effected well owners.

15. *Has the Morgan Hill to Gilroy perchlorate plume been stabilized? Is the perchlorate plume still expanding or is it contracting? Have any additional drinking water wells been affected by the plume?*
16. *Do perchlorate-contaminated well owners continue to receive replacement water?*
17. *How have the municipal drinking water supply wells of Gilroy or Morgan Hill been impacted? How is replacement water being provided?*
18. *What steps is your board taking to address the perchlorate problem? What type of monitoring and groundwater treatment has been ordered?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,



DON PERATA

DP:KW:dc



04/13/2006 09:37 0054732893 T. HAYASHI AND SONS PAGE 01/03

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**JOHN HAYASHI**  
**2460 GRACIA WAY**  
**ARROYO GRANDE, CA 93420**  
**805-489-6112**

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John Hayashi  
Responses  
WACB, Central Coast

**APRIL 12, 2006**

**TO: CALIFORNIA LEGISLATURE SENATE RULES COMMITTEE**  
**c/o NETTIE SABLELHAUS**  
**DELIVERED VIA FAX 916-445-0596**

**RE: ANSWERS TO QUESTIONS**

**HONORABLE DON PERATA, CHAIRMAN AND MEMBERS,**

**FORM 700: There are no changes to the statement. According to your letter if there are no changes a new FORM 700 is not required if we simply let you know. Please advise if there is a misunderstanding.**

**I have answered the following questions using my current experience as a board member, for specific questions I have had my EO compile the information.**

**Question 1.**

Prior to my appointment, the board had been working on a long-term goals and objectives plan, with interim measures such as our work on riparian corridor protection and enhancements, and our push for Low Impact Development as a primary means of protecting our surface and ground waters. In the meantime, we of course also need to proceed with the day to day business of permits, TMDLs enforcement etc., but we will try to align our budgeted programs (e.g., TMDL's, Non Point Source, Monitoring, Permits, etc.) to progress toward our long term vision for the Central Coast Region. I like this plan and I hope to improve it as we work on our vision to protect the waters of the State.

**APR 13 2006**

**Question 2.**

Yes, at this time the state board provides us with legal counsel, statewide policy and general permits that assist us. Our staff provides us with information for the hearings. Preparations for complex issues at hearings are usually quite time consuming for board members.

We have an annual off-site meeting with our EO and department supervisors to take a longer term look at how we are doing things and to explore avenues to improve or streamline the workload.

**Question 3.**

I have taken the ethics and conflict of interest training from the AG's office.  
I have had to withdraw from the ag waiver discussions.

**Question 4.**

Our State Board member assigned as a liaison is Jerry Secundy, he has been helpful in relaying State Board activities and helping with coordination.

The budget process is handled primarily by our staff, working with the State Board and that works fairly smoothly. Our region has been doing well (the only permit backlog we have had is for those permits that cannot be reissued due to factors beyond our control, such as lawsuits that need to be resolved) in all our areas of responsibility. We are becoming a performance based organization, with expectations and tracking of performance by all staff toward our goals.

The budget fund sources are numerous, and it is sometimes frustrating that we don't have more flexibility among those fund sources, but I don't think there is a problem with transparency.

**Question 5.**

Interesting question. I believe that our staff is hard at work pushing ourselves to do the best job that we can without looking for some excuse for non-performance. We are meeting our legal obligations.

**Question 6.**

**There is no question 6.**

**Question 7.**

BMPs quite often are the first line of defense and in most cases. Early implementation is a priority.

**Question 8.**

At this time no.

**Question 9.**

There is a chronology order of the most significant enforcement actions the Central Coast Water Board has taken in Los Osos. There were some other miscellaneous Cease and Desist Orders against individuals in some unusual situations but the attached chronology tells the major story. See answer to question 11. for current status. In order to meet statutory and due process requirements, the Board must provide the opportunity for a hearing before issuing cease and desist orders, which makes issuing enforcement orders to approximately 5,000 households and businesses an extraordinarily time consuming effort.

**Question 10.**

No two cases are exactly alike so it makes sense in most cases to use graduated enforcement: start with non-monetary actions but use monetary penalties when discharges have been recalcitrant. There are also individual situations where immediate civil liabilities are appropriate.

**Question 11.**

It did not take 23 years to issue cease and desist orders (CDOs). Our Board issued a prohibition of discharge, which is one of the most severe enforcement actions a Water Board can take, and then issued multiple CDOs to the County of San Luis Obispo, as well as to other larger dischargers in the prohibition zone in 1988. In 1995, the Water Board issued a Time Schedule Order to the County, with potential liability of \$10,000 per day of violation. When the new CSD took over wastewater responsibilities, the Water Board adopted CDOs against the CSD in 1999, and a Time Schedule Order against the CSD in 2000. The CSD proceeded with a project and started construction in mid 2005, but after a recall of three CSD Board members, the CSD stopped the construction. The Water Board promptly adopted an Administrative Civil Liability Order against the CSD for \$6.6M. The CSD petitioned the ACL to the State Board, and that is where the matter sits at this moment. Our Board will be considering a group of draft CDOs against individual residents/dischargers on April 28. As this is a pending enforcement action, the Board has not yet heard all the evidence, and cannot discuss the matter further at this time.

**Question 12.**

Our Central Coast Ambient Monitoring Program (CCAMP) conducts regional monitoring for the Central Coast Regional Board. The program includes 30 long-term sites at the mouths of creeks, and 30 sites that are moved through five watershed areas on a rotational basis. This program has been ongoing since 1998, though level of monitoring effort has varied considerably based on funding. Funding has included several sources:



the Surface Water Ambient Monitoring Program, grants, settlement funds, and other sources, and has ranged from about \$350,000 per year to \$500,000 per year. Funds from SWAMP (the State Board's Surface Water Ambient Monitoring Program) have ranged from as high as \$310,000 to a low of \$150,000 in FY 2005-2006.

Our Board instigated coordination among dischargers in the Carmel and Monterey Bay area to come up with receiving water monitoring that is more effective. Point source dischargers in that area have come together to form the Central Coast Long-term Environmental Assessment Network (CCLEAN), a regionalized monitoring program that evaluates loads from discharges, rivers, and streams, and associated impacts to beneficial uses. This program is funded by contributions by the participant dischargers and has been maintained for the past five years at a funding level of approximately \$400,000 per year. This program is integrated with CCAMP, and uses CCAMP data to support estimates from river mouth discharges.

In response to new Conditional Waiver requirements we adopted two years ago, agriculturalists in the Central Coast Region have formed a new non-profit organization, called Central Coast Water Quality Preservation Inc., that manages the Cooperative Monitoring Program for Agriculture. This program consists of a network of fifty long-term sampling sites, as well as a follow-up component in problem areas. Structurally, this program is tightly integrated with the Central Coast Ambient Monitoring Program. The program currently requires approximately \$1 million per year to implement. The first three years of funding have been acquired through Central Coast Water Board settlement funds from enforcement actions where we were able to steer discharger funds toward monitoring, and through Proposition 40 grants. However, the non-profit has begun implementing a dues structure for member growers, which ultimately will pay for the bulk of the program.

The sole Phase 1 stormwater program in the Region, for the City of Salinas, integrates monitoring activities both with the Cooperative Monitoring Program for Agriculture and with the Central Coast Ambient Monitoring Program. This program is currently being restructured and costs are not currently available, but it will likely cost around \$250,000 per year to run this program.

Several excellent volunteer monitoring programs are ongoing in the Region; in particular, programs in Elkhorn Slough and Morro Bay have been in place for many years. The Citizen's Monitoring Network for the Monterey Bay National Marine Sanctuary coordinates several annual area-wide monitoring events such as Snapshot Day. These programs provide excellent data, but are typically limited in scope because of budgetary constraints.

Several counties in the Region have ambient water quality monitoring programs, but these have been characterized by large changes in budget and focus over the years. Beaches throughout the Region are monitored by counties in response to AB 411, which requires pathogen indicator monitoring for beaches with heavy visitation.



Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?

Water quality monitoring should provide fundamental information for decision-making for State and Regional Board staff. An inadequate characterization of the quality of our waters leads to an inadequate basis for water quality objectives development, for setting permit limits, for listing and delisting waters under Section 303(d) and for assessing beneficial use support as required by Section 305(b). Budget swings in funding and staffing has made the collection, management and transfer of information difficult and less effective than it should be. Until monitoring is funded more consistently, it will continue to be challenging to get the information needed, where it is needed, in a time effective way. Monitoring should definitely be a high priority statewide. It already is a high priority for our Region.

What specific steps could your bd take to make monitoring more effective?

Regional programs have been relatively effective, given the small amount of budget they have had to work with. Though broad state-wide questions (like "what % of waters are supporting X beneficial use) may be of relevance to policy makers, they do not aid Regional Boards in making day-to-day decisions about how and where to fix water quality problems. It is critical that we adequately support Regional monitoring programs so that we can continue to find problems and fix them and provide protection for our more pristine waters.

More important than the funding level, is how do we use the resources that we have for monitoring most effectively. At the Central Coast Region we are identifying measurable goals for our Region, and are ensuring that our monitoring activities help us address these goals. For example, one of our goals is to ensure that by 2025, 80% of our riparian areas are healthy and 20% are getting healthier. The monitoring activities of CCAMP will provide key information for tracking the success of this goal. We are working now to integrate CCAMP activities with this new effort.

We have already committed financially to our ambient monitoring program through establishment of an endowment with a non-profit entity, to support monitoring activities for the long-term. We intend to continue to build that endowment. Because of the unpredictable funding base provided by the SWAMP program to date, this additional funding source has been key to our monitoring program's stability and success. We strongly suggest that the State work to provide the similar financial stability for SWAMP. Quality monitoring programs cannot be built when an unpredictable budget disallows planning.

#### Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and total maximum daily load programs.

Currently regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

### **Question 13.**

The current schedule for total maximum daily load development is contained in the Total Maximum Daily Load Program Workplan, which covers the current fiscal year. Additionally, staff has projected total maximum daily load development tasks beyond the current fiscal year for several projects and this information is contained either in individual project plans or in the statewide planning and tracking database maintained by program staff.

For the most part, this schedule is being met and the Central Coast Region has demonstrated success at developing several total maximum daily loads, many by the projected completion date. Occasional delays occur during the technical analyses phases of load development due to delays in submittal of contracted data or analyses, due to staff vacancies that interrupt project progress, or due to difficulty clarifying the most appropriate regulatory mechanisms available in absence of a policy for addressing impaired waters (e.g., determining whether loads must be implemented through adoption of Basin Plan Amendments or by permit actions).

Our staff does a fairly good job staying on schedule identifying impaired waters and developing pollutant loads that will lead to cleanup. In fact, we have one of the most comprehensive regional monitoring programs, which provides us with a basic body of data to rely on for identifying impaired waters. Additionally, we have dedicated monitoring staff that collect samples from our waters regularly so they are familiar with the conditions of our waters. We also have dedicated and highly qualified staff assigned to determine the appropriate pollutant loads; they manage and complete multiple projects every year.

These efforts could be improved by the following:

- Insist on improving our identification of opportunities and constraints to determining pollutant loads, and increasing staff's problem-solving to address constraints;
- Support staff recommendations to address constraints and improve development of loads (e.g., provide contract funding, expedite contract process, address problems with the Basin Plan);
- Based on understanding of opportunities and constraints, insist on oversight of staff efforts and performance evaluation of staff and Regional Board programs by Regional and State Board management;
- Require vacancies in the Total Maximum Daily Load program to be filled as quickly as possible by prioritizing recruitment or by transferring staff from other programs into the vacancies as soon as possible;
- Improve staff recruitment capabilities by reviewing and modifying existing qualifications for environmental scientists and engineering geologists (which do not



recognize degrees, such as geography, that often provide excellent watershed and landscape scale analytical skills);

- Recognize need, improve methods and devote some resources for outreach and education and for information management systems to notify and track responses from diverse and numerous newly affected parties (e.g., multiple private landowners discharging nonpoint source pollution);
- Devote resources to data collection, data management and data analysis;
- Dedicate staff and resources to change outdated or inaccurate Basin Plan water quality standards that thwart efforts to establish appropriate thresholds for determining impairments and setting pollution loads;

Increase grant funds for, or, regulatory authority to require, dischargers and other managers of water bodies (e.g., water districts) to collaboratively perform pollutant loading assessments on a watershed scale, such as source identification, quantification of existing loads, quantification of amount of load reductions; assignment of responsibility for meeting loads, and development of implementation plans to achieve the loads.

#### **Question 14.**

As far as implementing the pollution loads, I recommend the following steps:

- In our region, we are elevating the priority of implementing established loads in other existing implementation activities and regulatory programs of the Regional Boards (e.g., Nonpoint Source Pollution Control, Waste Discharge Permitting, Stormwater Management);
- Assign Regional Board staff in current pollution control and regulatory programs (listed in bullet above) responsibility for implementing established loads by conducting outreach, issuing new permit requirements, soliciting and ranking grant-funded projects, tracking and evaluating effectiveness of discharger management practices or permit compliance and evaluating effectiveness of water quality improvements resulting from these activities.
- Educate staff in other implementation and regulatory programs at the Water Boards about the relationship between established pollution loads and implementation activities and oversight;
- Encourage more use of current Total Maximum Daily Load development resources for implementation oversight and tracking;
- Recognize need, improve methods for outreach and education and for information management systems to notify and track compliance from affected parties (e.g., multiple private landowners discharging nonpoint source pollution);
- Recognize the importance of numeric target and load reduction data collection, data management and data analysis;
- Provide grant funding to agencies and landowners required to implement load reduction activities;
- Other agencies should, wherever appropriate or possible, coordinate monitoring and assessment activities with our agency, provide technical assistance regarding load reduction strategies, coordinate and leverage their grant funds towards implementation of pollution loads, enforce their authorities if more effective than ours to insure pollution reduction (e.g., land use planning agencies should condition approval of urban development projects with water quality protecting conditions);

- To ensure our partnering agencies (e.g., Department of Fish and Game) fulfill a role in implementing Total Maximum Daily Loads, I recommend that we have dedicated staff from our agency that coordinate with our partnering agencies to insure a level of education and cooperation that facilitates their ability to conduct activities as suggested in the previous bullet. Also, these agencies could enter into Management Agency Agreements or Memoranda of Understanding with our agency and/or be asked to report periodically on their efforts to support implementation of pollution loads. Whenever possible, our staff should recommend regulatory requirements that are coincident with or leverage off of existing regulations and authorities of these agencies.

#### **Question 15.**

Based on groundwater data collected over the past two years (First Quarter 2004 through Fourth Quarter 2005 data), it is evident the perchlorate plume is shrinking and declining in concentrations throughout the entire plume area (9.5-mile horizontal length). According to the March 3, 2006 Plume Migration Control Assessment Report, concentrations are either below the public health goal (6 parts per billion) or indicate significant decreasing to stable trends over time in the areas south of Middle Avenue, approximately 1.6-miles south of the site. Based on these findings, and assuming the declining trends continue, it appears that migration control of the perchlorate plume may not be necessary in areas furthest away from the site (south of Middle Avenue). I do not believe any additional drinking water wells have been affected by the plume during the last year. In fact, recent data indicate that groundwater samples from quite a few drinking water wells are not detecting perchlorate concentrations above the reporting limit for the analytical method used (4 ppb).

#### **Question 16.**

Yes, perchlorate-contaminated well owners continue to receive replacement water at his time.

#### **Question 17.**

There are several municipal drinking water supply wells in the Morgan Hill and Gilroy area that are impacted by perchlorate. However, other than the City of Morgan Hill's Tennant Well, which is located immediately down gradient from the Olin site and is impacted with elevated concentrations of perchlorate (>10 ppb), the majority of the other municipal supply wells in the area have not detected perchlorate concentrations above the PHG or Public Health Goal (6 ppb). With few exceptions (sporadic detections above the analytical method's limit of 4 ppb), the majority of the municipal supply wells are reporting perchlorate detections as "non-detect." Nonetheless, the City of Morgan Hill and City of Gilroy have installed well head treatment (Ion Exchange Systems) on all of their municipal supply wells that have a detection of perchlorate. This action is being implemented strictly as a precautionary measure based on City policy to ensure the public is adequately protected.

Olin is not providing replacement water for the affected Municipal Supply wells. However, Olin is treating perchlorate-impacted water from the Tennant Well and



paid for a replacement municipal supply well (San Pedro Well) to replace the Tennant Well.

### **Question 18.**

In general, the following steps have been taken to address the perchlorate plume: Required Discharger, through a Cleanup or Abatement Order, to provide replacement water to all affected domestic well owners.

Issued Cleanup Orders to require the Discharger to:

- delincate the extent and degree of perchlorate groundwater impacts.
- Implement necessary groundwater cleanup in accordance with our Water Board's cleanup process (i.e., Resolution 92-49).
- monitor (sample and report) and assess groundwater conditions (hydrogeology) throughout the Llagas Subbasin.
- Identify other potential sources of perchlorate that may have contributed to the groundwater impacts.

The type of monitoring and treatment ordered includes monitoring of existing water supply wells in the area. Monitoring wells include domestic supply wells. Additionally, the Discharger has installed 36 groundwater monitoring wells along the entire span of the plume. Most recently, nine multiport wells (each well with nine sampling ports) were completed. Additionally, the discharger has been required to implement a groundwater extraction, treatment and re-injection system at the Olin Facility. Perchlorate-impacted groundwater is being extracted from the southern portion of the site, treated with Ion Exchange to non-detect levels, and re-injected into groundwater. A small volume of the treated effluent is also being used as a water supply to treat perchlorate-impacted soils onsite (in-situ bioremediation project).

The Discharger is nearing the end of characterization activities for the Llagas Subbasin and will be providing a cleanup feasibility study by June 30, 2006. Pending the results of the Feasibility Study, the establishment of a groundwater cleanup level and the adoption of an MCL (Maximum Contaminant Level) for perchlorate, we anticipate additional plume control/treatment of perchlorate-impacted groundwater will be necessary and implemented in the immediate vicinity of the source area.

**Response to the Senate Rules Committee  
Regarding: Confirmation Hearing, April 26, 2006 for Monica S. Hunter  
board member of the Central Coast Regional Water Quality Control Board**

*It is my privilege to provide the following responses in reply to the letter sent to me by Chairman Perata of the Senate Rules Committee. I thank the Chairman for this opportunity to provide information about the Central Coast Region and hope that my views and understanding of State and Regional Water Board policies demonstrate my ability and willingness to meet the challenges and responsibilities of a Regional Water Quality Control Board Member.  
Respectfully submitted by Monica S. Hunter, Ph.D.*

1. Current efforts are underway in Region 3 to implement two key programs: the Irrigated Agriculture Waste Discharge/Water Quality Plan Program, and the NPDES Phase II Storm Water Management Program. These two programs will assure that the board is effectively taking action on nonpoint source pollution associated with rural, as well as urban areas. A common element of these programs is one that I strongly support and will encourage the Board to pursue in order to maximize resources. The essential element of these programs relies on a collaborative framework that can help to meet funding needs, and also provide technical assistance to support program implementation.

In the Agricultural community where the individual operator is being asked to improve water management practices, Regional Board staff have worked diligently to assure that critical support is provided by the Farm Bureau, Natural Resource Conservation District, the Resource Conservation Districts, and UC Extension. The available support for the Storm Water Management Program has also demonstrated that USEPA guidance including NPDES Phase I experience, will inform structured planning that engages key segments of the community targeted for nonpoint source issues that include both small business practices and residential impacts to water quality.

The opportunity for the coastal Regional Boards to implement Governor

Monica S. Hunter, Ph.D.

April 14, 2006

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1



Schwarzenegger's Oceans Action Plan will require that current Regional Board programs develop appropriate links to the emerging marine resource management framework. A fundamental concern stems from the Governor's efforts to develop effective and efficient policies that minimize overlap and duplication, while maximizing existing programs. A key action underway in the Central Coast area is being spearheaded by the Marine Life Protection (MLPA) Act Blue Ribbon Task Force, supported by a public/private partnership to implement the MLPA. Through their efforts, the pilot program for the marine protected area system will be implemented in the Central Coast region, from Pigeon Point to Point Conception. It is imperative that Region 3 actions maximize in every way possible opportunities to support improving water quality in the nearshore environment to meet critical marine management goals. The action that the Board takes regarding ocean discharge, coastal stream restoration, and reducing nonpoint source pollution are all integral to the successful outcome of the MLPA initiative. Links with the Critical Coastal Watershed program will also provide important opportunities to form collaborative formal and informal partnerships between agencies managing coastal environments. It is my hope that through funding programs established by Proposition 50, these partnerships will be facilitated and will provide the platform necessary to marshal the best resources of each of the programs and agencies involved in order to achieve marine resource management goals.

My work as a board member requires that I be fully prepared for each enforcement and/or policy action as issues come before the board. As a new board member, I have demonstrated an ability and willingness to engage in substantive probing with staff and with members of the public to assure that we consider the technical and scientific aspects of the issues, as well as the local level challenges and constraints that are typically associated with water quality problems. The process is one that allows for a creative approach to problem solving and that ultimately will benefit from innovative application of

Monica S. Hunter, Ph.D.

April 14, 2006

2

local knowledge and technical experience to meet new goals. In this way, I believe Region 3 can help to meet the Governor's goals to assure that the costs of improving water quality and establishing water conservation practices are achieved in the most effective and efficient way possible.

My goals as a board member also include opportunities that I will have to consider ways in which environmental justice goals set by the State Water Quality Control Board can be met. This effort is one that requires constant awareness to ensure inclusion of all communities in public participation processes. I am also committed to implementing Proposition 59, enacted by the voters to ensure meaningful participation and access to public processes. I am confident that I share these goals with my fellow board members who have demonstrated a commitment and respect for public participation, and, led by Chairman Jeff Young, strive to maintain a fair and open process in all actions taken by the Board.

2. Since my appointment on May 5<sup>th</sup> 2005, assistance provided to me by Region 3 staff has been extremely helpful in my efforts to understand Regional Board procedures, and also in providing staff reports in a timely manner allowing for adequate time to review challenging and often substantial levels of information. Additionally, Executive Officer, Roger Briggs, has extended every opportunity to me to assist in preparing for hearing actions, responding to requests for additional information, directing my questions to staff when appropriate, and assisting with inquiries of legal counsel regarding potential conflict of interest issues. As a new board member, I have found that both my colleagues on the board and the staff are very supportive and willing to provide every possible effort to assist me in becoming an effective board member. Additionally, legal counsel to the Board actively participates in review and advises on matters before the board that help to clarify and interpret statewide policy under the Porter-Cologne Water Quality Act. State

Monica S. Hunter, Ph.D.

April 14, 2006

3



Board staff also provides assistance to the regions that guide policy on personnel and training, budget development and contracting assistance.

Opportunities for Regional Board members to discuss needed change occur both at the state level and at the regional level on a regular basis. Regional Board members from across the state have the opportunity to attend semi-annual meetings that are designed to review statewide priorities, new legislation, planning for priority programs coming online, budget issues, and also consider new approaches and the latest technologies to improve water quality. Region 3 holds an annual meeting off-site where the agenda is geared to reviewing progress on program goals and developing plans for short-term and long-term strategies in an open discussion format that allows informal interaction between board members and staff.

3. I have had several opportunities to review and consider state policies regarding conflict of interest. My initial orientation provided me with a binder of materials that included basic information, with key documents and written policy guidance. I attended an orientation session conducted by the State Board's legal counsel and the Executive Officer of Region 3 in which the conflict of interest guidance and policies were reviewed in detail and discussed at length. Additionally, following that orientation, I consulted Legal Counsel to Region 3 to review my professional and project activities to assure that I am correctly interpreting particular elements of my work involving watershed restoration programs.

In my statement submitted with my application for board member, I disclosed that I am a homeowner in the unincorporated community of Los Osos, and reside in the Prohibition Zone (as defined in the Basin Plan). Under these circumstances, I stated that I would recuse myself from any action related to the proposed wastewater project or any other aspect of the Prohibition Zone. I have also recused myself from review of the Storm Water Management

Monica S. Hunter, Ph.D.

April 14, 2006

4

Program for Monterey County due to a letter that I submitted prior to my appointment to the board opposing the approval of the program.

4. The role of the Regional Boards is, in my view, a critical one that ensures the effective implementation of statewide policy within the context of local issues, constraints and practices. In my experience, centralized, top-down management action often fails to meet local needs responsive to actual conditions and situations. The locally oriented regional framework allows for action that maximizes supporting mechanisms within the context of the most available resources that include not only funding, but local knowledge and experience in creating practical but effective solutions. At the same time, the laws governing water quality and water management more generally are increasing in complexity both because of our technical capacity to ascertain the health risks and other impacts to the environment, and also because of the shift from point source to nonpoint source problems. Nonpoint source problems are by their nature more challenging to characterize, and formulation of appropriate actions must address widespread, multi-source elements that are typically associated with nonpoint source issues.

I also view the role of the Regional Boards as essential to maintaining adequate access to public processes. Moving these processes out of the regions would reduce the public's ability to provide input, reduce awareness and understanding of the elements that determine policy and enforcement actions, and would ultimately reduce accountability to those most directly impacted. Specific areas of operation that could help to improve accountability are different at the local level than they are at the state level. I believe that budgetary issues primarily concern statewide industry organizations and environmental groups that are focused on policy effectiveness and workings of the State Water Board.

Monica S. Hunter, Ph.D.

April 14, 2006

5



However, the real work of solving water quality problems occurs at the level of the discharger, where assessment of local practices must occur, and where determination of the most appropriate remedial actions are best developed. In this way, the local community as a whole has the opportunity to understand not only the impacts of pollutants in the waterways, but also the benefits and costs that come with changing local practices and enforcing remedies. Conducting this work at the local level is, in my view, the best assurance that solving the state's water quality and water supply problems incorporate transparency, equity, and access to the process.

5. In this day of governmental budgetary shortfalls, I would be pressed to identify a single government program that is adequately funded. Even the most successful programs that could effectively put more funding to good outcomes are lacking sufficient staff and technical resources to build and expand their efforts. However, I do believe that the State and Regional Boards benefit from the links to federal policies and programs, and this is especially true of coastal programs that are funded to protect marine and coastal resources. As the first state to implement a marine protected area network in the country, California will establish a new phase in marine resource management that reflects this state's successful efforts to improve water quality and restore the nearshore marine environment. Therefore, it is essential that the coastal Regional Boards match their actions and priorities with federal funding priorities that will occur in the coming decade to support this effort.

Additionally, Region 3 has developed the Supplemental Environmental Program that provides the opportunity for dischargers to cooperatively allocate a percentage of their fines to fund local mitigation projects. In my view, the SEP provides a very innovative opportunity to allow dischargers to become part of the solution, and to assure that the local regional environment

Monica S. Hunter, Ph.D.

April 14, 2006

6

is directly linked, both in public perception, and through directed funds, with appropriate remediation efforts to improve and protect water quality.

6. N/A

7. The greatest challenge we face currently is identifying effective actions to reduce nonpoint source pollution. This is especially true of improving storm water management systems both from a cost standpoint, as well as from the practical reality of upgrading business, industry and municipal systems to meet new standards required to improve water quality. BMPs are one tool in the kit that have been demonstrated to provide a cost-effective approach that may in reality only target the "low hanging fruit." However, the process of changing institutional and cultural practices, and our ability to effectively manage and protect our economic viability are also factors that have to be considered in shifting technologies and practices in the long term.

Often, the leading edge of change is found among those who find new approaches interesting and who are risk takers. In some cases change occurs through efforts of those more willing or capable of supporting new ideas, who can afford to explore the benefits of finding newer and less costly ways to operate. And, once demonstrated, the effectiveness and success of a cost-effective solution that meets new standards can be more broadly implemented. Thus, the effort of implementing BMPs is one in which finding new solutions eventually helps to establish methods that reduce costs for the smaller operator as systems are made efficient through trial and error. Those who are unwilling or unable will ultimately come under scrutiny through enforcement actions that may also provide technical assistance and perhaps funding assistance when appropriate. In a suite of effective actions, BMPs have proven to overcome established practices, and will continue to be a key approach to implementing cost-effective changes that we must achieve in the long term. The bottom line in my view is that we simply cannot afford to apply

Monica S. Hunter, Ph.D.

April 14, 2006

7



enforcement action as the only method to achieve broad and sweeping changes. Encouraging voluntary BMPs will continue to be a major and viable component of improving the state's water quality.

8. At present, the Phase II program concentrates on smaller municipalities that have the benefit of learning from the experience of Phase I programs, as well as USEPA guidance designed especially for Phase II, and as a result a suite of BMPs are available to review for appropriate action, costs, and projected timeframe to achieve goals. Additionally, the Phase II Programs will select among a range of measurable goals that can help to characterize achievements in implementing BMPs that are known to be effective generally in improving water quality through research and study. These measurable goals include timeframe for implementation, as well as frequency of application of BMPs (over time and in a given locale). It is important to keep in mind that the expense and complexity of instituting monitoring of water quality improvements based on achieving absolute minimum numerical standards could result in delayed approvals necessary for establishing Phase II programs. Therefore, progress toward measurable programmatic outcomes is ultimately achievable and more economically feasible in the long-term, allowing for limited funding to be directed toward implementation of tested and effective BMPs.

9. Numeric limits are being developed in Region 3 based on 303d impaired water bodies where sufficient monitoring data exists to determine levels of pollutants present. However, the process is now at the stage where determination of cost-benefit ratios must be carefully considered in assessing the best methods to reach goals to reduce pollutant loads. This includes not only consideration of scientifically achievable outcomes, but also the feasibility of implementing viable systems within reach of the small municipalities. This is especially true in urban communities within rural counties, where small communities simply do not have the economic base to

Monica S. Hunter, Ph.D.

April 14, 2006

8

assess the high costs of implementing change. Numeric targets could in reality force municipalities to attempt to meet unrealistic goals to control all of the potential pollutants that could be present, including those that enter the waterways from outside the jurisdiction of the storm water program.

Requiring BMP implementation, with monitoring efforts focused on the progress of BMP implementation, will allow municipalities to begin to take steps that can reasonably be expected to improve storm water management. Numeric targets, in my view, are more meaningful as a way to assess progress overall throughout a watershed, or other ecological units of measure that will determine so-called "hot spots" that will require more intensive action. Assessing overall improvements on a regional basis will also assure that we understand the collective effects of BMPs applied systematically to validate or reassess outcomes within an adaptive framework to determine best approaches and solutions.

10. As a homeowner in the Prohibition Zone, I must recuse myself from statements concerning current Board actions related to the waste water treatment issue. Therefore, my response to this question (and to question 11) would be a statement based on my status as a homeowner. My concern is that in providing written response that will become part of the public record, the information may inadvertently be communicated to other members of the Central Coast Regional Board. I would be willing to discuss these issues with staff of the Rules Committee if further information is needed.

11. I will address this question within the context of Board actions more generally, without specific reference to the situation in Los Osos. As a new board member, I am in the process of fully understanding the sequence of actions that can occur as a discharger comes under review for violation of the water code. Phased levels of enforcement begin with staff action to inform the discharger of the nature of the violation without monetary fines. This initial phase provides opportunities for the discharger to meet with Regional Board

Monica S. Hunter, Ph.D.

April 14, 2006

9



staff to determine ways to correct the problem, and to develop a plan for corrective action based upon the best solution available to the discharger including timeframe and methods that must be approved by the Board. In the case of recalcitrant dischargers, further action is warranted that includes monetary penalties for failure to correct the problem. Ultimately the recalcitrant discharger will bear the additional burden of the fine on top of the cost of the remedial action.

However, as municipalities are found to be in violation of discharge requirements, the conditions that are integral to implementing action to correct the problem may involve other factors that may or may not be under the direct control of any one of the entities concerned. A case in point can be made for a small community that must work with county departments, state permitting organizations, and other regulatory bodies (e.g., Coastal Commission) that must review and approve any action taken (this is true in the case of the City of Hollister, as well for the communities of Morro Bay and Cayucos). My understanding of these processes suggests that Regional Board staff must work within this essentially cooperative framework to provide assistance in the best way possible. This includes intervention on behalf of the entity with other agencies to negotiate the best timeframe and approval process, as well as to consider the costs and capacity of the small community to fund implementation of necessary changes. It is my understanding that USEPA may initiate review of the high cost of meeting current water quality criteria for small-scale communities. If so, this could help to provide a more feasible approach to meeting essential costs that will support making improvements in water management systems in communities that are unable to meet the challenge of funding multi-million dollar capital projects.

12. N/A (see #9 above)

Monica S. Hunter, Ph.D.

April 14, 2006

10

13. Region 3 has developed the Central Coast Ambient Monitoring Program (CCAMP) that conducts regional monitoring at various sites, and also provides a database that integrates CCAMP monitoring data with data from other programs. The Regional CCAMP monitoring program was established in 1998 and includes 30 ongoing sites, and 30 sites that are rotated throughout five watersheds within the region. Funding for this program has varied over the years, and therefore the level of monitoring has varied. Funding ranging from \$350k to \$500k annually has been provided by such programs as the Surface Water Ambient Monitoring Program, settlement funds, and various grant sources.

Region 3 also initiated coordinated monitoring among dischargers in the Carmel and Monterey Bay that is based on receiving water monitoring that has been highly effective. As an outcome of that effort, point source dischargers in the area have formed a regional group, the Central Coast Long-term Environmental Assessment Network (CCLEAN), to implement a monitoring program that evaluates pollutant loads from discharges on rivers and streams, and assesses associated impacts for beneficial uses. The program began 5 years ago and is currently funded from a common pool made up of contributions of the dischargers and currently maintains an annual budget of \$400k. The program is integrated with CCAMP and utilizes CCAMP data in its monitoring assessments.

Another important monitoring program currently in development is being funded by the agricultural community as a component of the Conditional Waiver Requirements for the Irrigated Agricultural Water Quality Program. This effort will be coordinated by a nonprofit organization, Central Coast Water Quality Preservation Inc., formed to meet monitoring requirements. This program will also be integrated with CCAMP and will initially cost \$1m annually funded primarily by member dues. Assistance from the Region 3

Monica S. Hunter, Ph.D.

April 14, 2006

11



board to provide initial start-up funds of \$3m were provided from settlement funds as well as from Proposition 40 grants.

Phase I storm water monitoring also requires one municipality to maintain a program within Region 3. The City of Salinas is projected to expend approximately \$250k annually to implement its storm water program, which will be coordinated with the Cooperative Monitoring Program for Agriculture, as well as with the CCAMP program. Changes in the Salinas program are currently underway and therefore costs may change as the agricultural program comes online.

Additionally, the region is home to some very effective and successful volunteer monitoring programs (VMP) that are integral components of large programs that include the Elkhorn Slough, the Monterey Bay National Marine Sanctuary and the Morro Bay National Estuary Program. All of these VMPs have developed quality programs that meet state criteria and quality assurance protocols. These programs have also provided a highly effective opportunity for citizens to become involved in measuring water quality, learning about pollutants and various health and environmental impacts associated with pollutants, and in the process gain an understanding of the importance of protecting water quality. In addition to seasonal monitoring and storm event monitoring, annual statewide events link the programs across communities engaging all age groups with data gathering for "Snap Shot Day" as a way to raise awareness of the importance of maintaining clean and healthy waterways. Funding for these programs varies, however, the success of these efforts in contributing necessary data, as well as in educating the state's citizenry, may assure that these programs continue to receive federal and state funds.

Smaller programs exist that are variously funded that include ambient water quality programs and county funded beach monitoring programs (required by

Monica S. Hunter, Ph.D.

April 14, 2006

12

AB 411) to assess pathogens for popular beaches. These programs serve an important need, especially where health risks are a factor. Therefore, these programs should be considered for additional state funding targeting support for maintaining clean beaches.

Water quality monitoring has only recently seen funding levels increased in an effort to assess outcomes of such programs as the Irrigated Agricultural Program. However, the strategy for ongoing funding is not assured, as is the case for CCAMP, and therefore, reliance on a systematic design to assess overall gains in water quality are not possible. It is clear that dedicated funding for monitoring is key to characterizing the exact nature of our water quality problems, and it is our hope that the CCAMP program will serve as a model for programs statewide with adequate funding.

Despite the lack of reliable funding, Region 3 has made a commitment to develop the CCAMP framework, and will continue to expand the database as the network of future monitoring programs grows. The merits of this program will be demonstrated as the region is able to improve characterization of changes over time that include measurable improvements in surface and groundwater. In this manner, our region is making every effort to utilize its limited resources to support establishing a systematic approach to measuring regional goals, and will continue to build the CCAMP system as future funding is identified.

14. The enormous challenges associated with implementing the TMDL program cannot be overstated. These challenges include lack of funds, staffing, and adequate time to develop regulatory mechanisms to coordinate among agencies where overlapping jurisdictions may exist. Despite these obstacles, Region 3 has made limited progress toward implementing TMDLs and has had some success in developing specific TMDLs on schedule. However, the program does suffer from lack of support that if addressed

Monica S. Hunter, Ph.D.

April 14, 2006

13



could improve performance. Necessary elements include: increased recruitment and replacement of TMDL staff; dedicated funds and expertise to update Basin Plans; improved outreach and education to reach diverse groups that will be affected by TMDL measures; resources to improve tracking and notification of dischargers; improved oversight of the TMDL program by Regional and State Board management staff; and, support staff recommendations that address program constraints.

15. In Region 3 TMDL program efforts are underway with an approach that will integrate the determined loads within existing programs including the Nonpoint Source Pollution Control Program, Waste Discharge Permitting, and the Phase I and Phase II Storm Water Management programs. This is an effective and efficient effort to begin addressing the TMDL element of all activities within the region despite the limitations mentioned above. While we have taken the initiative to develop this approach, the needs of the staff for additional training remains a priority that would assist staff with developing outreach, developing and issuing new permit requirements, grant development, and also tracking and evaluating discharger compliance. Compliance issues also require adequate resources to track and assess outcomes, to work with dischargers where compliance is not being achieved, and to identify additional program resources as situations present various conditions that need to be addressed with the support of additional Regional and State Board resources.

In my view, other agencies have a role to play in achieving goals to implement TMDLs. For example, where overlapping jurisdictions regularly bring agencies together in their management responsibilities, e.g. permitting agencies (Fish and Game, Coastal Commission), there is a logical opportunity to maximize resources through establishing formal partnerships in the form of MOUs or MOAs. In this way, the capacity of the combined resources of the agencies can facilitate meeting scheduled goals, and assure

Monica S. Hunter, Ph.D.

April 14, 2006

14

that efforts are not duplicated in meeting priorities that achieve common goals.

16. The most recent report of the perchlorate clean-up effort presented at our February Board meeting indicates that the plume is declining both in size and in concentration. Additional information presented at the March 3, 2006 report, indicated that concentrations of perchlorate in drinking wells are at or below public health concentrations (6ppb), and are stabilizing in areas south of the site. This information suggests that further efforts to control migration may not be necessary in areas south of the site (below Middle Avenue), however, I am interested in learning more from the staff about the projected efforts that will be required before final determinations can be made. It is my understanding that the reports show that no new drinking water wells have shown signs of contamination for at least one year, and in some cases groundwater samples associated with drinking water wells are showing perchlorate concentrations of 4ppb or less.

17. At the present time Olin is required to provide bottled water to residents, and in some cases is providing Ion Exchange well head treatment to well owners. Olin recently prevailed in its efforts to terminate the replacement water program based on recent changes in the health standards that set 6ppb as the allowable perchlorate concentration in well drinking water. Olin representatives attended the February Regional Board hearing in Salinas and notified the board that they intend to terminate the program as soon as they can demonstrate compliance with Order 2005-0007 that allows discontinuance of the replacement water program after meeting the 6ppb standard for four consecutive quarters. The Board determined that this option could be met as early as May 19, 2006.

18. Monitoring data has shown that several municipal wells in the Morgan Hill and Gilroy areas are impacted by perchlorate. As a precautionary measure,

Monica S. Hunter, Ph.D.

April 14, 2006

15



however, the City of Morgan Hill and the City of Gilroy have installed Ion Exchange Systems to provide wellhead treatment on all of the drinking water wells within the municipal systems. The cost of this action is warranted as a measure to assure that public health is protected. With only one exception (the Tennant Well in Morgan Hill), the levels shown in most of the wells do not exceed the Public Health Standard of 6ppb, and most fall below the non-detect level (analytical method of 4ppb). Olin is providing treatment for the Tennant Well and is also providing replacement municipal supply well water at the San Pedro Well.

19. Olin continues to proceed with actions required by Cleanup and Abatement Orders, as well as Monitoring and Reporting Programs to determine outcomes of those actions. Additional action under CAO R3-2004-0101 required Olin to provide replacement water to well owners and tenants. This action was revised by the State Water Resources Control Board (WQO 2005-0007) and pursuant to the revised order, Olin requested termination of the bottled water program for 78 wells. Region 3 most recently issued R3-2006-0014 to allow Olin to discontinue the replacement water program upon compliance with conditions that will be met in May 2006.

Additionally, Olin has been required to install well head treatment and as of December 31, 2005, Olin had installed Ion Exchange Systems on 18 wells of the 34 that are considered candidates for the IE systems. Of the 18, 9 are fully operational, and the remainder are in various stages of progress toward operation. Ongoing treatment of groundwater (Resolution 92-49) has also been implemented and as reported at the February hearing, the system has removed perchlorate from nearly 89m gallons of groundwater to date. Extracted groundwater from the southern portion of the site is treated to non-detect levels and re-injected at the site.

Monica S. Hunter, Ph.D.

April 14, 2006

16

Under CAO R3-2005-0014, Olin is required to complete Characterization and Monitoring Work Plans for the Llagas Subbasin in order to delineate the extent and degree of the perchlorate groundwater impacts. The Monitoring Plan was submitted in July 2005, and the Characterization Work Plan was submitted in December 2005. Approvals of those plans are pending further revisions based on initial staff review. As part of this effort Olin also produced a Preliminary Groundwater Flow Assessment for the City of Gilroy, and is currently engaged in discussion regarding possible options for retrofitting sentry wells. With the completion of the Characterization reporting phase of the work, Olin will be required to submit a feasibility study due in June 2006.

Monitoring activities are also underway and will be further clarified once the Monitoring Reporting Program is final. At this time, both on-site and off-site sampling activities have been conducted and are reported on a quarterly basis. This effort will assure that monitoring data will help to identify other potential sources of groundwater impacts from perchlorates. Olin has installed 36 monitoring wells that span the entire plume (9.6 miles). Nine additional multiport sampling wells have also been installed.

The Feasibility Study will set the schedule and scope of work for continued groundwater cleanup. This effort will be based on a Maximum Contaminant Level for perchlorate that will determine future plume control/treatment of impacted groundwater in the vicinity of the source area.

Monica S. Hunter, Ph.D.

April 14, 2006

17

1. The first step in the process of the scientific method is to make an observation or ask a question.
2. The second step is to do background research.
3. The third step is to form a hypothesis.
4. The fourth step is to test the hypothesis by conducting an experiment.
5. The fifth step is to analyze the data and draw a conclusion.
6. The sixth step is to communicate the results.
7. The seventh step is to repeat the experiment to verify the results.
8. The eighth step is to make a prediction based on the results.
9. The ninth step is to test the prediction.
10. The tenth step is to draw a final conclusion.
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94. The ninety-fourth step is to draw a final conclusion.
95. The ninety-fifth step is to communicate the final results.
96. The ninety-sixth step is to make a prediction based on the final results.
97. The ninety-seventh step is to test the prediction.
98. The ninety-eighth step is to draw a final conclusion.
99. The ninety-ninth step is to communicate the final results.
100. The hundredth step is to make a prediction based on the final results.



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April 15, 2006

By Facsimile: 916 445-0596

Senator Don Perata  
Attn: NettieSabelhaus  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Re: Central Coast Water Quality Control Board, Confirmation Hearing 4/26/06

Dear Senator Perata:

Thank you for allowing me to provide answers to the questions that you posed in your March 22, 2006 correspondence regarding my work on the board. Regarding Form 700, the copy that you have covers 2005 and is current. I signed it on January 10, 2006.

1. *What do you hope to accomplish during your tenure as a member of the Central Coast Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

I have been fortunatc in that my colleagues have elected me board chair for the 3<sup>rd</sup> year in a row after serving one year as vice-chair in 2003. In this capacity as chair my responsibilities and involvement with staff is slightly different than those of my colleagues. There are a few things I want to continue to move forward both in my role as chair and as my role as a board member. As chair, I feel that it is very important to provide a fair and impartial hearing forum for our numerous contested items. I am always mindful that we are the face of state government and funded by tax payers, for the most part. The last impression that I want any individual/company/discharger to take away after having been in front of our board is that they did not have an opportunity to have their side of the story heard and genuinely considered by the board. It is important that the public respects the board and its decision making proccss. As a trial lawyer I long ago came to realize how important it is when litigating disputes, that an adverse ruling was always more palatable if the parties felt that the court kept an open mind until the evidence was in, allowed adequate time to present one's case, and thoughtfully considered the evidence in all of its light. As much as possible with our much truncated and informal hearing process, I strive to continue keeping our hearing process as fair and transparent as possible.

APR 18 2006



A second goal I developed with our Executive Officer two years ago was to focus some of our attention towards big picture - planning issues. Our board came up with a list of potential big picture issues that in a perfect setting, with unlimited staffing and budget, we could address throughout our region. The original list contains 12 issues. With board and staff discussion, the list was paired down to 3 issues ("Vision Items") that all felt we could address within our present agenda: 1) Promoting Low Impact Development as a means of protecting water quality, 2) Advancing the adoption of Riparian Corridor Protection and Enhancements, and 3) Advancing Innovative Approaches to Storm Water Quality treatment. The greatest source of water quality impacts comes from non-point sources - primarily agricultural and urban. These three Vision Items all advance water quality improvement emanating from non-point sources.

As chair, these two sets of goals, fairness in contested hearings and advancing our three Vision items has been and will not be difficult to accomplish given my personal interest in them and power as board chair. The challenge has and will no doubt continue to be, to keep these sets of goals on the front burner as the board continues to address its numerous statutory responsibilities in the areas of: 1) TMDL planning, 2) Non-point source pollution, 3) NPDES and WDR permitting, 4) Enforcement, and 5) Monitoring.

2. *Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

Staff has always been very accessible whenever board members have questions regarding complex issues. For legal issues our state board appointed attorney, in my opinion as a lawyer, is superb. This individual could easily find employment in the private sector and always has an analysis that I find helpful and on the point. For technical issues, once a request has been made to our Executive Officer for assistance, one of the more knowledgeable staff individuals always contacts us to answer questions. Frankly, I do not know how this area could be improved given the resources presently available and accessible to us.

3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

Water board members from all regions meet at least once per year (called Water Quality Coordinating Committee meetings) with their Executive Officers, state board members, and state board executive staff. I have participated in almost all of these meetings since being appointed to the board in 2000. At each meeting, there has always been an agenda item devoted to training on conflict of interest/bias issues presented by state board attorneys. Our own board attorney has also presented training on these issues from time to time and is aware of potential conflicts/bias issues regarding our individual board members. The attorney general's office also provides an internet accessible training seminar on ethics and conflict of interest, which I have viewed. We

have been very good at identifying these issues before they come up and when recusal is in doubt for a particular board member on a particular agenda item, we have sought state board advice which we have always followed.

I have recused myself from two agenda items due to bias, not conflict of interest: 1) The re-issuance of the NPDES permit to the Goleta Sanitary District, and 2) The board's involvement with the septic tank to sewer conversion for the Rincon Homeowner's Association.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

The relationship between the state board and our regional board is very good. I meet monthly by tele-conference with state board Chair Tam Doduc and the other regional board chairs. This provides me with an opportunity to discuss new issues with Chair Doduc and be in a position to get a more prompt and personal response than if I went through our Executive Officer. Our new state board liaison is Jerry Secundy. Mr. Secundy has been present at almost all of our board meetings and has diligently followed up with our board members' requests for input/advice on pressing issues. The budget process is handled by our staff who works with the state board. The only time I had a concern with a budget allocation issue is when I didn't feel the state board was allocating enough PYs to our region for managing our Agricultural Waiver program. I wrote my own letter to the state board and received an adequate explanation for the allocation they chose. Although I would have liked to see more funds allocated to our region, the explanation given to me was satisfactory. The bottom line is that the allocation process appears to be working well. If we had more funds coming into the state and regional boards to begin with allocation would not be an issue.

5. *Do you believe the central coast regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

We could always use more funds to address the numerous programs and responsibilities that we have. If we had more funds dedicated to enforcement we could take on more of the more minor enforcement issues that appear from time to time and have a greater presence in the field to identify enforcement issues. The later, I believe would yield benefits. We have to prioritize our enforcement budget to address the greatest threats to water quality first. When we can, we coordinate our enforcement efforts with other local and state agencies. I am not aware of any legal requirements faced by our board that are not presently funded or proposed for funding.

7. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*



There are some truths to each of these approaches. BMPs should result in water quality improvements. In our region we have only one Phase I Storm Water permit - the City of Salinas, the rest are Phase II. We have only just begun issuing Phase II permits so we don't have a track record yet to refer to see if BMPs have not been effective. However, numeric limits would not necessarily make permits more enforceable - that depends on how the BMPs are identified in the permit. For instance, if a discharger chooses street sweeping as a BMP to address heavy metals in storm water, compliance can be easily checked by comparing how frequent and over what extent street sweeping is required under the permit and whether those tasks have been completed. An outsider still has to look at the discharger's own monitoring reports to see if compliance has been achieved, whether or not numeric limits or BMPs are imposed.

My personal view is that in the area of storm water, it is appropriate to require the adoption of BMPs at the first go around. This allows the discharger to pick and choose the most cost effective way for it to improve storm water quality. After one permit cycle if improvements have not been achieved then I would place greater interest in requiring compliance by way of numeric limits. I also think it important to keep in mind that storm water quality problems have been in the making for decades. We are only recently beginning to appreciate how land use development has played a dominant role in the creation of these problems. It makes more sense to me to address storm water quality through Low Impact Development criteria and innovations to Storm Water treatment than forcing expensive end of pipe point source type treatment. We can certainly order numeric limits but at what unnecessary cost to the discharger? Is the legislature able to help fund the implementation of numeric standards in these permits like it and EPA has been done historically with point source discharges? It all comes down to funding. Make more money available to help improve storm water treatment and you will see less issue with imposing numeric limits.

8. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

I don't have enough experience yet to competently answer this question. I have my opinions but no data derived from our permits to rely upon in making those opinions. Our board has just begun to issue Phase II permits - no data has been generated. Our only Phase I permit (Salinas) just came up for renewal and I do offer to say that I was not impressed with its efforts to improve storm water quality. Its monitoring effort did not provide any clues as to how effective its implementation of BMPs was. Our board ordered more monitoring and required more BMPs to be followed in the next permit. A big complaint we heard from Salinas was the lack of funding to carry out this mandate and the legitimate impact from nearby agricultural waste discharges onto its municipal storm water.

9. *What is the status of the enforcement actions against the Los Osos and Baywood residents and property owners? Have cease and desist orders been issued? What is the status of the enforcement action against the Los Osos Community Services District (CSD)?*

Staff has proposed issuing Cease and Desist Orders against the first 45 property owners (out of 5,000) in Los Osos and Baywood. These combined hearings are scheduled for April 28, 2006 in San Luis Obispo. Staff is proposing that the board issue the CDOs which would require the property owners to begin bi-monthly septic tank pumping or face monetary penalties of \$10,000 per day if they fail to comply with the CDO requirements. The board anticipates that staff will propose either additional CDOs or Cleanup or Abatement Orders against the remaining property owners after April 28, 2006.

On January 5, 2006 the board adopted an Administrative Civil Liability complaint against the Los Osos Community Services District for \$6.6 million. This complaint was adopted for failing to adhere to the Time Schedule Order issued in 1995 to build a waste water facility. The CSD has petitioned the board's adoption of the ACL to the state water board where the matter currently sits.

10. *What enforcement options do you believe provides the most effective tools for longterm violations of board orders?*

When non-monetary enforcement efforts fail to achieve compliance I believe it appropriate to utilize monetary penalties and cease and desist orders. The particular situation, however, needs to be considered before opting for the most severe penalty as a first step. With Los Osos, the board and staff believed the community was on the right track towards compliance when it broke ground on a new waste water treatment facility in 2005. Who could have predicted that the community would remove a majority of district directors with individuals that stopped the project, lost the low interest rate loan it had been given, and incurred \$6.6 million in civil penalties?

11. *Why did it take 23 years for the enforcement of the board's order to rise to the level of issuing cease and desist orders?*

Actually the first CDOs were issued in 1988 against larger dischargers and the County of San Luis Obispo. A Time Schedule Order was issued to the County in 1995. In 1999 the board issued CDOs against the newly formed CSD. Up until that time there was no CSD, just county jurisdiction. The board made every effort to allow the community through its own CSD, to come into compliance before considering the issuance of individual CDOs against property owners. With the obstinance and recalcitrance of the new CSD directors, it has become obvious that the our board has to use its most powerful enforcement tools against individuals as a means of addressing the ongoing water quality impacts.

12. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels?*

Besides the obvious self monitoring that accompanies most permits, there are numerous monitoring efforts on-going in our region that are unique.



a. The board has its own region wide monitoring program called CCAMP (Central Coast Ambient Monitoring Program). Since 1998, 30 sites at the mouths of creeks and 30 sites that are moved through the five main watersheds in our region on a rotational basis, are monitored each year. The level of monitoring has fluctuated with available funding. Funding has come from the State Board's Surface Water Ambient Monitoring Program, grants, settlement funds, and other sources.

b. The board instigated a comprehensive and coordinated monitoring effort among point source dischargers in the Carmel and Monterey Bay area called Central Coast Long-Term Environmental Assessment Network (CCLEAN). This is a regionalized effort that monitors receiving waters such as rivers and streams and the impacts to their associated beneficial uses. Funding comes from the participant dischargers. The program integrates with the board's CCAMP effort.

c. Two years ago the board adopted a conditional waiver program to regulate, for the first time, agricultural discharges. To coordinate their monitoring requirements, farming interests formed a non-profit organization called Central Coast Water Quality Preservation, Inc. to manage and fund the cooperative monitoring effort.

*Should water quality monitoring be a higher priority for the state and regional boards?  
What specific steps could your board take to make monitoring more effective?*

d. I can't speak for the other regional boards or the state board as to their own monitoring efforts. As a general statement, water quality monitoring should be a high priority across the state because accurate data allows regulators to monitor and assess the status of beneficial uses and to protect them proactively. In our region, monitoring is a high priority with our CCAMP program. See answer to (a) above. I would like to see a steady source of funding for our CCAMP program. Because our region's monitoring of our 5 major watersheds is rotated on an annual basis, our ability to maintain a base level of monitoring each year is challenged.

*What specific steps could your board take to make monitoring more effective?*

e. Putting funding aside, I believe our staff is doing everything possible to make our region's monitoring programs as effective as possible.

13. *What schedule currently exists at the central coast regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the central coast regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

a. The current schedule for total maximum daily load development is contained in the Total Maximum Daily Load Program Workplan, which covers the current fiscal year. Additionally, staff has projected total maximum daily load development tasks beyond the current fiscal year for several projects and this information is contained either in individual project plans or in the statewide planning and tracking database maintained by program staff. I am more than happy to have these schedules produced for your review, should you so request.

b. For the most part, the schedules are being met. There have been some delays during the technical analyses phases of load development due to delays in submittal of contracted data or analyses, due to staff vacancies that interrupt project progress, or due to difficulty clarifying the most appropriate regulatory mechanisms available in absence of a policy for addressing impaired waters (e.g., determining whether loads must be implemented through adoption of Basin Plan Amendments or by permit actions).

c. Our region is for the most part on schedule based on available funding. We have a set of dedicated staff positions who work on TMDLs. If a faster pace is desired it "only takes more funding." Staff has provided me with a list of tasks that could improve our TMDL processing. This list is as follows:

- Insist on improving our identification of opportunities and constraints to determining pollutant loads, and increasing staff's problem-solving to address constraints;

- Support staff recommendations to address constraints and improve development of loads;

- Based on understanding of opportunities and constraints, insist on oversight of staff efforts and performance evaluation of staff and Regional Board programs by Regional and State Board management;

- Require vacancies in the TMDL program to be filled as quickly as possible by prioritizing recruitment or by transferring staff from other programs into the vacancies as soon as possible;

- Improve staff recruitment capabilities by reviewing and modifying existing qualifications for environmental scientists and engineering geologists (which do not recognize degrees, such as geography, that often provide excellent watershed and landscape scale analytical skills),

- Recognize need, improve methods and devote some resources for outreach and education and for affected parties (e.g., multiple private landowners discharging nonpoint source pollution),

- Devote resources to data collection, data management and data analysis,

- Dedicate staff and resources to change outdated or inaccurate Basin Plan water quality



standards that thwart efforts to establish appropriate thresholds for determining impairments and setting pollution loads.

- Increase grant funds for, or, regulatory authority to require, dischargers and other managers of water bodies (e.g. water districts) to collaboratively perform pollutant loading assessments on a watershed scale, such as source identification, quantification of existing loads, quantification of amount of load reductions, assignment of responsibility for meeting loads, and development of implementation plans to achieve the loads.

14. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Staff assisted me with this answer and I concur in their recommendations. They are as follows:

- In our region, we are elevating the priority of implementing established loads in other existing implementation activities and regulatory programs of the Regional Boards, (e.g. Nonpoint Source Pollution Control, Waste Discharge Permitting, Stormwater Management);

- Assign Regional Board staff in current pollution control and regulatory programs responsibility for implementing established loads by conducting outreach, issuing new permit requirements, soliciting and ranking grant-funding projects, tracking and evaluating effectiveness of discharger management practices or permit compliance and evaluating effectiveness of water quality improvements resulting from these activities;

- Educate staff in other implementation and regulatory programs at the Water Boards about the relationship between established pollution loads and implementation activities and oversight;

- Encourage more use of current TMDL development resources for implementation oversight and tracking;

- Recognize need, improve methods for outreach and education and for information management systems to notify and track compliance from affected parties (e.g. multiple private landowners discharging nonpoint source pollution);

- Recognize the importance of numeric target and load reduction data collection, data management and data analysis;

- Provide grant funding to agencies and landowners required to implement load reduction activities.

15. *Has the Morgan Hill to Gilroy perchlorate plume been stabilized? Is the perchlorate plume still expanding or is it contracting? Have any additional drinking water wells been affected by the plume?*

Groundwater sampling over the last two years indicates that the plume is shrinking in size and declining in concentrations. We do not believe any additional drinking water wells have been affected by the plume.

16. *Do perchlorate-contaminated well owners continue to receive replacement water?*

Yes.

17. *How have the municipal drinking water supply wells of Gilroy or Morgan Hill been impacted? How is replacement water being provided?*

The City of Morgan Hill's Tennant Well is down gradient from the Olin Site and is impacted with perchlorate at levels exceeding 10 ppb. Even though the City of Gilroy's wells are reporting non-detect levels of perchlorate (for the most part - there are a few wells that are reporting just detectable levels), both Gilroy and Morgan Hill are well head treating all of their municipal well supplies as a precaution. Olin refused to supply these cities with replacement water - our board asked them to - because the detectable levels have below the public health goal of 6 ppb. The exception being the Tennant Well which Olin is paying compensation to Morgan Hill for that well's operation.

18. *What steps is your board taking to address the perchlorate problem? What type of monitoring and groundwater treatment has been ordered?*

Our board has ordered the following steps be taken:

- We required Olin, through a Cleanup or Abatement Order to provide replacement water to all affected domestic well owners;

- We issued 13267 (water code) orders to Olin to; delineate the extent and degree of perchlorate groundwater impacts, implement necessary groundwater cleanup in accordance with our board's cleanup process (our Resolution 92-49), monitor and assess groundwater conditions throughout the Llagas Subbasin, and identify other potential sources of perchlorate that may have contributed to the groundwater impacts.

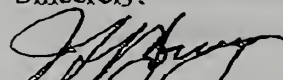
Existing water supply wells in the area are being monitored and some are undergoing treatment. Olin has installed 36 groundwater wells solely for monitoring along the entire span of



the plume. We have also required Olin to implement a groundwater extraction, treatment and re-injection system at its facility. Perchlorate impacted groundwater is being extracted from the southern portion of the Olin site, treated with Ion Exchange to non-detect levels, and re-injected into groundwater. Olin is close to finalizing its characterization activities for the Llagas Subbasin and will be providing us with a cleanup feasibility study by June 30 of this year. Pending the results of the Feasibility Study, the establishment of a groundwater cleanup level and the adoption of an Maximum Contaminant Level for perchlorate, we anticipate additional plume control/treatment of perchlorate impacted groundwater will be necessary and implemented in the immediate vicinity of the source area.

Thank you for allowing me to provide responses to your questions. If the committee needs additional information from me please call. I'll be glad to provide it.

Sincerely,

  
Jeffrey S. Young



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STATEMENTS OF GOALS BY  
GOVERNOR'S APPOINTEES NOT REQUIRED TO APPEAR

MEMBERS OF THE STATE BOARD OF BARBERING AND COSMETOLOGY:  
MARLENE A. GADINIS, JERRY R. TYLER, and JERRI ANN WALTERS

MEMBERS OF THE BOARD OF DIRECTORS, HASTINGS COLLEGE OF LAW:  
MARCI L. DRAGUN, EUGENE L. FREELAND, and ALBERT J. YOUNG

CALIFORNIA POET LAUREATE: ALBERT J. YOUNG

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 3, 2006





**WRITTEN**  
**TRANSCRIPT**  
**NOT**  
**AVAILABLE**

WATSON

TRAVELER

FOR

WATSON

## MEMBERS

JIM BATTIN  
VICE-CHAIR

ROY ASHBURN

DEBRA BOWEN

GILBERT CEDILLO

GREGORY SCHMIDT  
SECRETARY OF THE SENATENETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 23, 2006

Marlene A. Gadinis

Dear Ms. Gadinis:

As you know, your appointment to the Board of Barbering and Cosmetology is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by February 17th.

1. *What are your goals and objectives as a member of the Board of Barbering and Cosmetology? What do you hope to accomplish?*
2. *According to information the board submitted to the Joint Committee on Boards, Commissions, and Consumer Protection as a part of the sunset review process, the board has developed recommendations "to determine the most effective manner to disseminate information to licensees, applicants, and the public." Please explain the status of the board's implementation of these recommendations.*

**Board Structure**

The Board of Barbering and Cosmetology is responsible for licensing and regulating barbers, cosmetologists, electrologists, estheticians, and manicurists. In 1997 the board was sunsetted, and all of its duties, functions, and powers were transitioned to the Department of Consumer Affairs. In 2003 the board was recreated, and it is now scheduled to sunset on July 1, 2007.

3. *Please explain how the board encourages participation in its activities by licensees, applicants, and the public, including participation by individuals with limited English proficiency.*





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## Foot Spa Infection Outbreak

In 1999 and 2000, more than 100 women were affected by an outbreak of a bacterial infection at a pedicure salon in Watsonville, California. And, in November 2004, over 127 people were infected as a result of pedicures at various salons in San Jose. After the Watsonville incidents, the Barbering and Cosmetology Act was amended to authorize the board to immediately close an establishment found to have severe health and safety violations that pose an immediate threat to public health and safety. The act also requires the board to adopt rules protecting public health and safety, and mandates that the board's highest priority be protection of the public.

Assembly Bill 1263 (Yee) of 2005 would have required the board to adopt regulations concerning the use of pedicure equipment. In his veto message, the governor directed the Department of Consumer Affairs to convene a working group including the board, county health officials, consumer groups, pedicure equipment manufacturers, and other interested parties to determine how to improve the safety of pedicure equipment and ensure appropriate consumer protection.

4. *What has the board done to address the infection outbreak? Did the board use its authority to temporarily shut down the establishments in San Jose? Has the board ever used this authority?*
5. *Do you believe the board needs additional authority to address issues which threaten the public's health and safety? If so, please explain what authority the board needs and what steps the board has taken to obtain the ability to adequately respond.*
6. *What is the status of the working group mentioned above?*

## Enforcement Issues

According to a background paper prepared by the Joint Committee on Boards, Commissions, and Consumer Protection, the board spends only 39 percent of its budget on enforcement while other consumer boards typically spend over 60 percent. The paper also notes that even though the board has full authority to increase its fines for violations, it has not modified its administrative fine schedule since 1994. The board's 2004-2005 Strategic Plan indicates that it is currently reviewing and updating the fine schedule, and at its October 24, 2005, meeting the board approved the creation of a task force to study the issue. The strategic plan states that proposed regulations are under review, noting that changes are "needed as the current fine schedule does not serve as a deterrent to violators."

7. *Is your enforcement program adequate to protect the public? Do you believe that the board should spend a larger percentage of its budget on its enforcement program?*

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8. *What is the status of the task force created to review the administrative fine schedule? What is the status of the proposed regulations to revise the schedule?*

### **Administration of Licensing Exams in Women's Prisons**

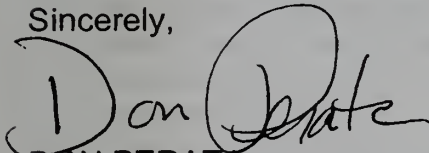
The Valley State Prison for Women provides its inmates with a board-approved cosmetology program, permitting inmates to accrue the necessary hours of training to meet licensure requirements. Although the board in the past has administered the licensing examination in the prison, it does not currently do so, leaving participants in the program unable to enter the profession without delay upon their release. The California Department of Corrections was recently reorganized into the California Department of Corrections and Rehabilitation to place additional emphasis on rehabilitation measures.

9. *Why doesn't the board administer exams in prison as it has in prior years? Do you believe the board should once again administer exams at Valley State?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:SK:dc

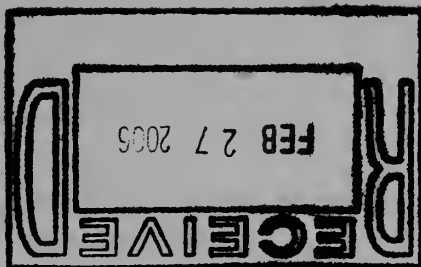
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Marlene Gadinis  
Responses

Sunday, February 12<sup>th</sup>, 2006

To whom it may concern,

I am responding to the questions asked by the committee:

1). my goals and objectives as a member of the State Board of Barbering and Cosmetology are as follows;

I have every intention of upholding the governor's agenda

I believe that the health and welfare of the consumer is of the utmost importance.

I believe that if we can get people employed in our industry more effectively, we will be not only be helping them earn an honest wage, but also helping the state. I hope to help the people working in our industry to better understand what is expected of them by the State. I feel this can be attained through outreach and education. During my term I hope to shorten the time out-of-state candidates must wait for licensure, prohibiting them from entering the work force and ultimately adding a burden to our state's economy.

I hope to bring a consistency to the way businesses practice, creating an overall trust and respect by the consumer

2). The Board as I am aware, has implemented a cost effective means of disseminating information to applicants, licensees, and the public by establishing a newsletter. It will have sections that directly apply to each of these groups. I feel that this is an excellent tool to bring updated information to the forefront. It is the goal of the board to publish these on a quarterly basis.

3). The Board does hold bi-monthly meetings which are held in different cities and are public forums. I feel that this encourages public participation. The meeting agendas are posted on the Board's website ten days in advance and are also in trade publications. To best serve our diverse population, the examination for licensure is offered in several languages. The Board has in addition, supplied the instructions on cleaning footspas in English, Spanish and Vietnamese





4). The Board has addressed the infection outbreak in several different ways.

The board has used its inspectors to help educate licensees. At each inspection inspectors thoroughly explain cleaning processes to all licensees. The Board has published information on how to clean footspas in various trade magazines read by the majority of licensees, including those of diverse cultures. The Board also mailed instructions on the cleaning and disinfecting of footspas to all licensed establishments after the outbreak.

The Board did not use its authority to shut down the establishment in San Jose. When the Board received the word that a potential outbreak was occurring, six inspectors were immediately re-directed to that area. Approximately 300 inspections took place and the inspectors found one establishment that was a threat to the consumer. This establishment willingly and immediately removed their footspas to alleviate the pending threat. The Board has not needed to use its authority in any other situation.

5). I do feel the board needs additional authority to address issues which threaten the public's health and safety. I feel more inspectors are a must. I feel that if there is a threat we need to have a system in place that fast track the process by which we respond to the needs of the situation. We can only do this with more enforcement. In the working group that has been established per the governors veto of AB1263, the area of increase authority is being explored This group will make recommendations to the Board on what types of additional authority it could obtain to address safety issues.

6). the working group met on February 2, 2006 for the first time. The working group consists of the Department of Consumer Affairs, Cosmetology School Representatives, Industry Experts, the Department of Health Services, County health Officials, footspa Manufacturers, and Board staff. The group agreed upon various improvements and a recommendation will be made to the Board. The working group will meet again on February 15, 2006 and will begin to explore increased authority for the Board.

7). currently there are only 15 inspectors. We have approximately 35,000 licensed establishments and 350,000 individual licensees. Increasing the number of inspectors would increase safety for the consumer. I feel the board





must spend a larger percentage of its budget on this program and fine adjustments could be a way of assisting the budget to do so.

8). the task force has been established and will hold its first meeting on March 20<sup>th</sup>, 2006. The task force is comprised of licensees, school representatives, board inspectors, and board members. The task force will make a recommendation to the Board at the April meeting and if approved the regulatory process will commence.

9). I feel that if we are training these people to become cosmetologists, we also should provide the opportunity for them to test and be indoctrinated into the profession. I believe there are security and safety issues that are currently holding up the examination process. To this I say, if we cannot ensure these people a chance of entering the profession, we should remove the training from the facility.

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF THE HISTORY OF ARTS  
AND ARCHITECTURE

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## CALIFORNIA LEGISLATURE

## MEMBERS

JIM BATTIN  
VICE-CHAIR

ROY ASHBURN

DEBRA BOWEN

GILBERT CEDILLO

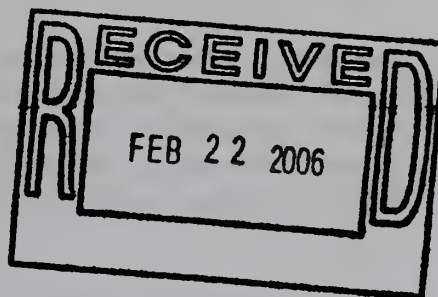
GREGORY SCHMIDT  
SECRETARY OF THE SENATENETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 23, 2006

Jarry R. Tyler



Dear Mr. Tyler:

As you know, your appointment to the Board of Barbering and Cosmetology is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by February 17th.

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# THE UNIVERSITY OF CHICAGO



THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

OFFICE OF THE DEAN OF THE DIVISION OF THE PHYSICAL SCIENCES

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## **Foot Spa Infection Outbreak**

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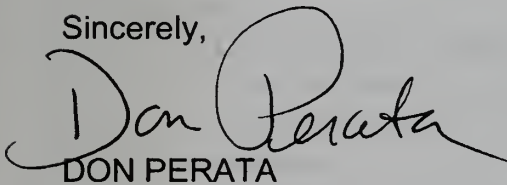
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Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DON PERATA

DP:SK:dc

The first part of the report is a general introduction to the project. It describes the purpose of the study and the objectives that were set at the beginning.

### 1.1. Objectives of the study

The main objective of the study was to investigate the effects of the new software on the productivity of the employees. To achieve this, several specific objectives were set, including: to measure the time taken to complete tasks, to assess the quality of the work, and to gather feedback from the users.

The study was conducted over a period of six weeks. During this time, data was collected from a group of ten employees who were using the software.

The results of the study are presented in the following sections. First, the data on task completion times is analyzed, followed by an assessment of the quality of the work.

### 2. Results

#### 2.1. Task completion times

The first set of results shows the time taken to complete various tasks. The data indicates that, on average, tasks were completed 15% faster when using the new software.

This suggests that the software is effective in improving productivity.

#### 2.2. Quality of work

The second set of results focuses on the quality of the work produced. The data shows that the number of errors was significantly lower when using the new software.

This indicates that the software also helps to improve the accuracy of the work.

Overall, the results of the study are positive. The new software appears to be a valuable tool for improving productivity and quality.



February 10, 2006

Senate Rules Committee Appointments Director  
Nettie Sablehaus  
Room 420 State Capitol  
Sacramento, Ca 95814

Dear Rules Committee,

My goals and objectives as a Board member for "Barbering and Cosmetology" is to bring my over 30 years of expertise/experience in all facets of the Beauty Industry as well as my 25 years of industry educational back round to further Consumer protection and advance the the beauty profession in California.

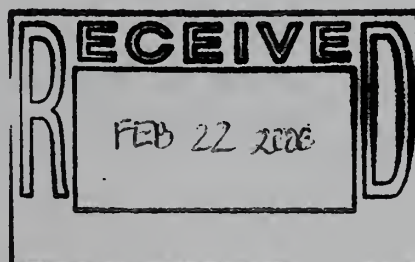
#### OUTREACH

In response to the committees questions as to outreach.

The State Board has developed (4) ways to desiminate information to licensee's.

- 1) Our current website [www.dca.ca.gov//barbercosmo](http://www.dca.ca.gov//barbercosmo)  
Is consistently upgrading the information to Consumers and licensee's even with the limited resources the board has to operate. All areas of interest to both parties are addressed and the site is consistently added to as concerns need to be addressed.
- 2) The board is developing a "Board News letter" as part of its Strategic plan and it will be attached to the website.
- 3) California Stylist magazine devotes a whole page to "Board News" in each monthly issue ands is the most read industry Publication in California.
- 4) The Board has an "Outreach Committee " to reach to community To address consumer and industry issues.

FOOTSPA INFECTION CONCERNS





Since the 2004 outbreak of footspa infections the board adopted a "Legislative" approach to address the challenge through support of the "Yee Bill" .Which was vetoed due to lack of DCA and Industry support.

While the board failed to exercise the "Regulatory" authority and "Emergency regulatory" authority it already possesses. The board did not close the salons I question despite it's authority to do so.

The Working group/ has met to discuss solutions to the problem.

I have written a policy paper recommending the registration of all footspa's in California as a condition of sale with the DCA.A requirement to obtain training in sanitation and disinfection of the spas as a condition of purchase , a rating system of salons based on compliance with health codes "(Green.Yellow, Red) and the requirement that all 1<sup>st</sup> time clients sign a statement of understanding As to the potential risks involved ie no hair removal within 24 hours of using the footspa.

The boards inspectors need the ability to coordinate with the 58 other counties health inspectors and should have the training and resources to obtain water samples and send them to the local counties or other state labs for insoection purposes to protect the public.

#### ENFORCEMENT ISSUES

As a new board member I believe the board needs to allocate a minimum of 60% of its resourses and buget to inspection and Enforcement as this is it's mandate to protect the public. I have supported the fine recommendations of the inspection and enforcement task forces.

There are many areas that the board has committed resources to that could be limited to allocate more for inspection/enforcement particularly in Exam/Licensing. Reciprocity, the National Exam,proctoring the exams in schools are solutions to reduce board resources that could be moved to enforcement.

#### ADMINISTRATIVE FINES

Fines need to be increased as a deterrent to potential consumer harm.The board is currently addressing this issue. I support this.

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## EXAMS IN WOMENS PRISONS

If the Department of Corrections and Rehabilitation is offering Board approved programs that require an exam for licenser , then they need to provide the exams in the prisons as in the past and the resources need to be allocated to make this possible. I am also working with the boards "Legislative" committee in addressing the Bill by assembly person "Bass on this issue.

Thank You for my opportunity to address these pertinent questions that are of the utmost importance to the consumers in our state and our industry,

Cordially ,Jerry Tyler

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
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SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 23, 2006

Jerri Ann Walters

Dear Ms. Walters:

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# THE UNIVERSITY OF CHICAGO



THE UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS  
JANUARY 1, 1900

TO THE PRESIDENT OF THE UNIVERSITY OF CHICAGO  
FROM THE FACULTY OF THE DIVISION OF THE PHYSICAL SCIENCES

WE HEREBY RESOLVE THAT THE UNIVERSITY OF CHICAGO  
SHOULD BE A MEMBER OF THE INTERNATIONAL UNION OF PURE AND APPLIED PHYSICS

AND THAT THE UNIVERSITY OF CHICAGO SHOULD BE A MEMBER OF THE  
INTERNATIONAL UNION OF PURE AND APPLIED CHEMISTRY

ATTEST

WILLIAM D. HARKNESS, President of the Division of the Physical Sciences  
JANUARY 1, 1900

WILLIAM D. HARKNESS, Secretary of the Division of the Physical Sciences  
JANUARY 1, 1900



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7. *Is your enforcement program adequate to protect the public? Do you believe that the board should spend a larger percentage of its budget on its enforcement program?*

## Introduction

The purpose of this study is to investigate the effects of various factors on the growth of a specific plant species. The study was conducted over a period of six months, during which the growth of the plant was monitored under different conditions. The results of the study are presented in the following sections.

The first section of the study describes the experimental setup, including the selection of the plant species, the growth medium, and the environmental conditions. The second section presents the results of the study, showing the growth of the plant under different conditions. The third section discusses the implications of the results and the limitations of the study.

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## Experimental Setup

The study was conducted in a controlled environment, where the growth of the plant was monitored under different conditions. The results of the study are presented in the following sections. The first section of the study describes the experimental setup, including the selection of the plant species, the growth medium, and the environmental conditions. The second section presents the results of the study, showing the growth of the plant under different conditions. The third section discusses the implications of the results and the limitations of the study.

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8. *What is the status of the task force created to review the administrative fine schedule? What is the status of the proposed regulations to revise the schedule?*

### **Administration of Licensing Exams in Women's Prisons**

The Valley State Prison for Women provides its inmates with a board-approved cosmetology program, permitting inmates to accrue the necessary hours of training to meet licensure requirements. Although the board in the past has administered the licensing examination in the prison, it does not currently do so, leaving participants in the program unable to enter the profession without delay upon their release. The California Department of Corrections was recently reorganized into the California Department of Corrections and Rehabilitation to place additional emphasis on rehabilitation measures.

9. *Why doesn't the board administer exams in prison as it has in prior years? Do you believe the board should once again administer exams at Valley State?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DON PERATA

DP:SK:dc

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

REPORT OF THE

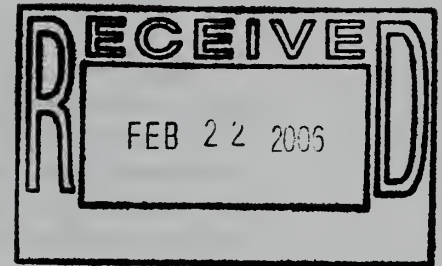
COMMISSIONERS OF THE

CHICAGO



February, 15, 2006

Mr. Don Perata  
Senate Rules Committee  
State Capitol Room 420  
Sacramento, CA 95814-4900



Dear Mr. Perata:

In response to your letter regarding my appointment to the Board of Barbering and Cosmetology, my goals as a member of the Board are to work closely with our members to protect the interests of all consumers. I plan to promote professional standards in all aspects of health, safety, ethics, and education. I will encourage participation from the public to allow their opinions, values, and recommendations to be heard. I hope to improve the area of enforcement with a plan or budget to allow for more inspectors.

The Board is establishing a newsletter to provide directed information to applicants, consumers, and licensee. The newsletter will be published quarterly and will be available of the Board's website along with consumer and industry events. Concurrently the Board is establishing a consumer awareness campaign with a main focus on consumer education.

The Board encourages by holding open public meetings every other month. The Board website posts the schedule of meetings and publishes meetings in trade publications, as well. The Board is aware of the diversity of population in the industry and offers the license exam in various languages. Instructions on how to clean foot spas have been supplied in English, Spanish, and Vietnamese.

The Board has addresses the infection outbreak in various ways. The Board mailed instructions on the cleaning and disinfecting of foot spas to all licensed salons. The instructions were provided in English, Spanish, and Vietnamese. Information on how to properly clean foot spas has been published in various trade magazines, including Vietnamese magazines. Board inspectors also explain proper cleaning procedures to licensees upon each inspection. The Board did not use its authority to shutdown an establishment in San Jose. Six inspectors were directed to the area when word was received of a potential outbreak. Approximately 300 inspections were conducted and the Board identified one establishment that posed in immediate threat to consumer safety. The salon willingly removed their foot spas which eliminated the threat to consumers. The Board has not had to use its authority to shut down an establishment.

Board inspectors currently do not have the authority to remove items from an establishment or take samples of water that may contain bacteria. This issue needs further



research before a recommendation is made to increase authority. A working group has been established and the increased authority is being explored. The working group will make recommendations to the board including what types of authority the Board could obtain to address safety issues.

The Working group consists of the Department of Consumer Affairs, cosmetology School Representatives, Industry Experts, County Health Officials, Department of Health Services, foot spa manufacturers, and Board staff. The first meeting was February 2, 2006; the group reviewed the current regulation on cleaning and disinfecting foot spas. The group agreed upon various improvements and a recommendation will be made to the Board on the February 15, 2006 meeting including possible increased authority for the Board.

The Enforcement Program could be improved in certain areas. One of these is the number of inspectors. Currently there are 15 inspectors for all of California, plus two supervising inspectors. Currently the Board was approximately 35,000 licensed establishments and 350,000 individual licensees. It is impossible to reach every licensed establishment with the limited number of inspectors. More inspectors would potentially increase the number of citations and disciplinary action. The Board has streamlined its internal enforcement and inspection process to ensure that consumer harm complaints are given top priority. The Board administers its exam five days a week at two locations in California and has a high number of licensees and applicants; a high percentage of the budget will be spent on licensing and examinations.

The task force has been established and is comprised of licensees, board inspectors, school representatives, and board members. The first meeting will be held on March 20, 2006. It is expected that the task force will make a recommendation to the Board at the April board meeting and upon approval the regulatory process will begin.

The Board did at one time administer exams at Valley State Prison. This was stopped for several reasons, including the safety of our examiners. The safety of our examiners could not be guaranteed, examiners were subject to verbal comments which falls under sexual harassment. The State must be able to provide a harassment free workplace for employees. The duty statement for a cosmetology examiner does not include entering a prison and therefore many examiners asked not to be placed in that environment. The exam would have to be hand carried in and out of the facility and this is not in line with examination safety guidelines. For these reason, the Board does not wish to reinstate this process.

Thank you for the opportunity to address these questions.

Sincerely,

  
Jerri Walters

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## MEMBERS

JIM BATTIN  
VICE-CHAIR

ROY ASHBURN

DEBRA BOWEN

GILBERT CEDILLO



GREGORY SCHMIDT  
SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

March 6, 2006

Marci Lynn Dragun

Dear Ms. Dragun:

As you know, your appointment to the Hastings College of Law, Board of Directors is subject to confirmation by the Senate. We would appreciate your written responses to the following questions in preparation for confirmation. Please have this information in our office by March 27th.

### Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the Hastings College of Law, Board of Directors.*

### Student Fees and Financial Aid

Students enrolled in the University of California's professional schools such as Hastings have experienced significant fee increases in recent years. For instance, resident enrollment fees at Hastings were \$13,735 in the 2003-04 academic year and \$19,925 in the 2005-06 academic year. The governor's 2006-07 budget proposes to buy out Hastings' proposed 2006-07 general enrollment and nonresident fee increases that were approved by the board in September 2005.

Hastings' financial aid office reports that around 80 percent of the student body utilizes loans, grants, or scholarships. Seventy-three percent of Hastings students on financial aid receive some grant income. Hastings' grants are funded through student fees and state allocations. Scholarships generally come from private endowments.

Hastings has a forgivable loan program called Public Interest Career Assistance Program available to graduates who are working full time in government or public interest law, and earning less than \$60,000 per year. Between 70 and 100 percent of eligible loans are forgivable under this program.



# THE UNIVERSITY OF CHICAGO

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2. *What is the board doing to keep Hastings affordable to low- and moderate-income students? Are outside funding sources being sought?*
3. *Do you have any additional proposals to keep Hastings affordable?*

Legal Education Opportunity Program

For thirty years, Hastings has operated the Legal Education Opportunity Program to help bring diversity to Hastings' student body. Under this program, there is an alternative admission policy for evaluating an applicant's potential for the study of law taking into account other considerations such as nontraditional backgrounds and personal challenges affecting academic preparation. Approximately 20 percent of each entering class is comprised of students admitted under this program. Once admitted, the Legal Education Opportunity Program offers special services to help these students succeed in law school such as weekly small group sessions, one-on-one tutoring, and practice exams.

4. *Have you had the opportunity to examine the Legal Education Opportunity Program? Is it meeting its goals? Do any aspects of the program need improving?*

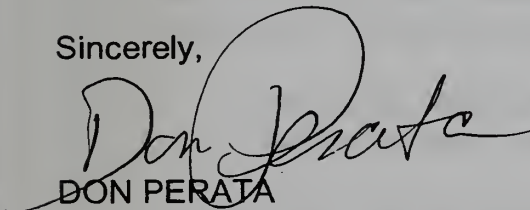
Board and Student Relations

Unlike the University of California Board of Regents, there is no student member on the Hastings Board. A student representative does give a report at each board meeting, and a student representative has traditionally participated in the selection of a new dean.

5. *Should the board take any steps to better facilitate communication between students and the board?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,



DON PERATA

DP:KS:dc

# THE HISTORY OF THE UNITED STATES OF AMERICA

BY JAMES M. SMITH, M.A., F.R.S.E.

IN THREE VOLUMES.

VOLUME I. FROM THE FIRST DISCOVERY OF THE CONTINENT TO THE END OF THE SEVENTEENTH CENTURY.

THE first discovery of the continent of North America, and the subsequent settlement of it, is the subject of this volume. It contains a full and complete history of the discovery of the continent, and of the settlement of it, from the first discovery of it by Christopher Columbus, in 1492, to the end of the seventeenth century.

THE second volume of this work, which contains the history of the United States from the beginning of the eighteenth century to the present time, is now in the press.

THE third volume of this work, which contains the history of the United States from the present time to the end of the nineteenth century, is also now in the press.

THE fourth volume of this work, which contains the history of the United States from the end of the nineteenth century to the present time, is also now in the press.

THE fifth volume of this work, which contains the history of the United States from the present time to the end of the nineteenth century, is also now in the press.

THE sixth volume of this work, which contains the history of the United States from the end of the nineteenth century to the present time, is also now in the press.

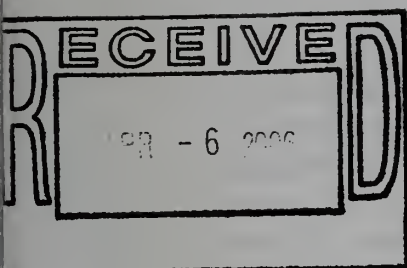
THE seventh volume of this work, which contains the history of the United States from the present time to the end of the nineteenth century, is also now in the press.

THE eighth volume of this work, which contains the history of the United States from the end of the nineteenth century to the present time, is also now in the press.

THE ninth volume of this work, which contains the history of the United States from the present time to the end of the nineteenth century, is also now in the press.

THE tenth volume of this work, which contains the history of the United States from the end of the nineteenth century to the present time, is also now in the press.





MARCI DRAGUN

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April 6, 2006

The Honorable Don Perata  
 Chairman, Senate Rules Committee  
 State Capitol, Room 420  
 Sacramento, CA 95814

RE: Questionnaire for appointment to the Hastings College of Law Board of Directors

Dear Senator Perata:

Please find the answers to the questionnaire regarding my appointment to the Hastings College of Law Board of Directors:

***1. Please provide a brief statement of goals you hope to accomplish while serving on the Hastings College of Law Board of Directors.***

There are several areas in which I hope to work as a member of this prestigious Board of Directors. Having been appointed (pending my confirmation) to the Finance Committee by Chairman Jack Smith, I will work with staff to maintain the continuity of the school's investment strategies. As one of the younger members of this Board, I would like to maintain a strong link with the student body of the school, who really are the ambassadors for Hastings. Their positive experience while at Hastings will embolden them to contribute back to the school as alumni and assist in marketing Hastings to future law students.

***2. What is the Board doing to keep Hastings affordable to low- and moderate-income students? Are outside funding sources being sought?***

At this point, I do not yet have this information. As I understand the issue, Hastings follows a three-prong approach to fees and financial aid: 1) Before raising fees the Board requires justification of the needs that are driving those costs so that there is a thorough review annually on the fiscal side; 2) Approximately 300 students live in the Hastings student apartment building on campus. Hastings has deliberately set rent rates below market value by 20-25% to help in the expensive San



[The text in this section is extremely faint and illegible. It appears to be a series of paragraphs or a list of items, possibly a report or a letter. The text is too blurry to transcribe accurately.]

Francisco/Bay Area housing market; and 3) Hastings has been adding substantially to endowed scholarships over the past several years and have increased those endowments, I am told, by over \$4 million. This is complemented by the grant program that takes a portion of all fee increases and returns them to grants to financially-needy students, resulting in over 70% of the students receiving grants between \$5000-9000.

**3. Do you have any additional proposals to keep Hastings affordable?**

At this point, I have only attended one Board meeting and am not yet familiar with all the issues regarding financial aid and other options for assisting students in defraying the cost of Hastings.

**4. Have you had the opportunity to examine the Legal Education Opportunity Program? Is it meeting its goals? Do any aspects of the program need improving?**

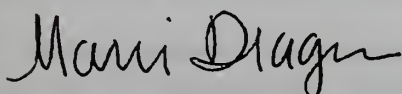
I have not yet had the opportunity to examine the Legal Education Opportunity Program. At this juncture, I cannot speak to whether it is meeting its goals or if the program needs improvement.

**5. Should the Board take any steps to better facilitate communication between the students and the Board?**

At the March Board meeting (my first), several students made a marvelous presentation to the Board about the results of a student survey they had conducted. For each student, it was the first opportunity they had to come before the Board of Directors and it was a very positive experience for them. The Board was equally impressed by the caliber and quality of their presentation and suggested that the students be more involved in the long-range planning process that the College will embark on next year. One suggestion that I have for the Board to become more accessible to students is for members to hold an informal "brown bag" lunch with students and listen to their concerns on an on-going basis.

Please do not hesitate to call me if you have further questions.

Sincerely,



Marci Dragun

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
530 SOUTH EAST ASIAN AVENUE  
CHICAGO, ILLINOIS 60607-7070  
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## CALIFORNIA LEGISLATURE

## MEMBERS

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VICE-CHAIR

ROY ASHBURN

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GILBERT CEDILLO

GREGORY SCHMIDT  
SECRETARY OF THE SENATENETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

March 6, 2006

Eugene L. Freeland

Dear Mr. Freeland:

As you know, your appointment to the Hastings College of Law, Board of Directors is subject to confirmation by the Senate. We would appreciate your written responses to the following questions in preparation for confirmation. Please have this information in our office by March 27th.

Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the Hastings College of Law, Board of Directors.*
2. *You serve as chair of the board's finance committee. What specifically would you like to accomplish as chair of this committee?*

Student Fees and Financial Aid

Students enrolled in the University of California's professional schools such as Hastings have experienced significant fee increases in recent years. For instance, resident enrollment fees at Hastings were \$13,735 in the 2003-04 academic year and \$19,925 in the 2005-06 academic year. The governor's 2006-07 budget proposes to buy out Hastings' proposed 2006-07 general enrollment and nonresident fee increases that were approved by the board in September 2005.

Hastings' financial aid office reports that around 80 percent of the student body utilizes loans, grants, or scholarships. Seventy-three percent of Hastings students on financial aid receive some grant income. Hastings' grants are funded through student fees and state allocations. Scholarships generally come from private endowments.



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Hastings has a forgivable loan program called Public Interest Career Assistance Program available to graduates who are working full time in government or public interest law, and earning less than \$60,000 per year. Between 70 and 100 percent of eligible loans are forgivable under this program.

3. *What is the board doing to keep Hastings affordable to low- and moderate-income students? Are outside funding sources being sought?*
4. *Do you have any additional proposals to keep Hastings affordable?*

#### Legal Education Opportunity Program

For thirty years, Hastings has operated the Legal Education Opportunity Program to help bring diversity to Hastings' student body. Under this program, there is an alternative admission policy for evaluating an applicant's potential for the study of law taking into account other considerations such as nontraditional backgrounds and personal challenges affecting academic preparation. Approximately 20 percent of each entering class is comprised of students admitted under this program. Once admitted, the Legal Education Opportunity Program offers special services to help these students succeed in law school such as weekly small group sessions, one-on-one tutoring, and practice exams.

5. *Have you had the opportunity to examine the Legal Education Opportunity Program? Is it meeting its goals? Do any aspects of the program need improving?*

#### Board and Student Relations

Unlike the University of California Board of Regents, there is no student member on the Hastings Board. A student representative does give a report at each board meeting, and a student representative has traditionally participated in the selection of a new dean.

6. *Should the board take any steps to better facilitate communication between students and the board?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,



DON PERATA

DP:KS:dc

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for ensuring the integrity of the financial system and for providing a clear audit trail.

Secondly, the document highlights the need for transparency in all financial dealings. This involves providing clear and concise information to all stakeholders, including investors, regulators, and the public.

Thirdly, the document stresses the importance of risk management. It outlines various strategies and tools that can be used to identify, assess, and mitigate potential risks to the organization's financial health.

Finally, the document discusses the role of technology in modern financial systems. It notes that while technology offers many benefits, it also presents new challenges, such as cybersecurity and data privacy, which must be carefully managed.

In conclusion, the document provides a comprehensive overview of the key principles and practices that underpin a successful financial system. It serves as a valuable resource for anyone involved in financial management or policy-making.

The document also includes a section on the future of finance, which explores emerging trends and technologies that are likely to shape the industry in the coming years.

Overall, the document provides a clear and concise summary of the current state of the financial system and offers practical advice on how to navigate the challenges and opportunities ahead.

The document is a valuable resource for anyone interested in the financial system and its future. It provides a comprehensive overview of the key principles and practices that underpin a successful financial system.

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*APR 24 2006*

March 18, 2006

Senator Don Perata, Chairman  
State of California Senate Rules Committee  
State Capitol  
Room 420  
Sacramento, CA 95814

Re: Senate Confirmation

Dear Senator Perata:

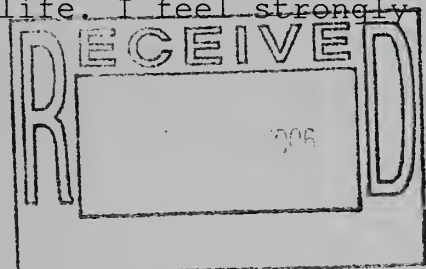
I have your March 6 letter asking my response to questions in preparation for your committee's confirmation hearing. Your questions show that you and your office have a good grasp of Hastings' operations. My answers are:

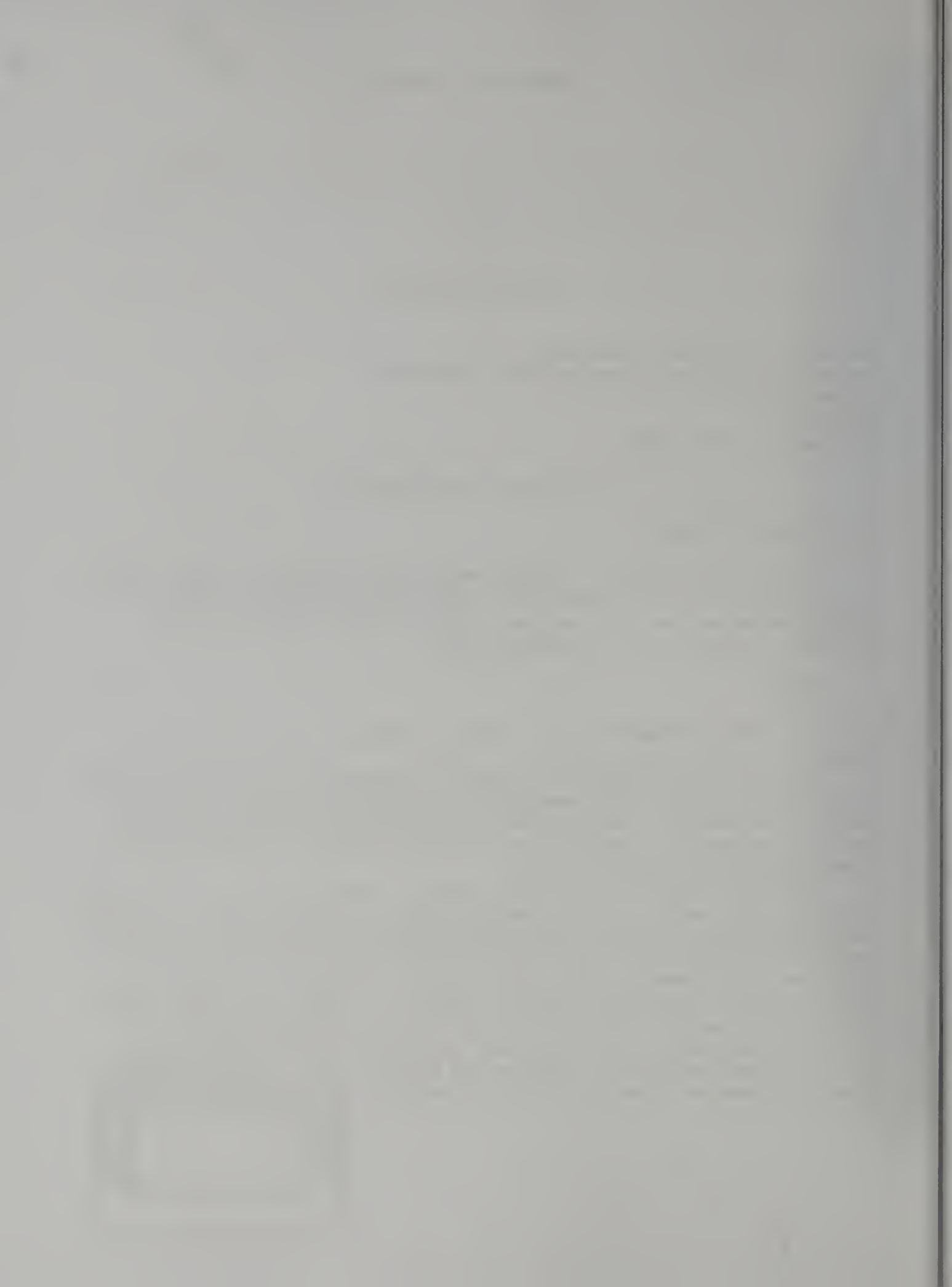
Goals

1. The two main goals I hope to achieve while serving on Hastings' board are:

a) To enhance existing sources of funding, and to develop new sources of funding, for Hastings' operating and capital budgets and its endowment. State funds are inexorably drying up and, to maintain Hastings' standing as a top law school, it must replace these funds and beat inflation.

One new source of reliable revenue that will also fill a void on Hastings' campus is the construction of the multi-story parking structure on the school's West Block where the surface parking lot is now. This structure will expand parking for vehicles and bicycles for students, faculty, visitors and some general public, will include limited but useful commercial space, and will ensure a steady stream of revenue for the college. A complementary on-site athletic facility is planned by the Tenderloin YMCA, which will further improve the quality of campus life. I feel strongly that this project must, and will, succeed.





b) Hastings will shortly be joined by its new Chancellor and Dean, Nell Newton. I, as a 1951 graduate, have been privileged to serve seven deans over the years, and she will be the eighth. I may bring to the table for her use unique institutional memories, and plan to offer her my full support during the transition and thereafter. As a board member these are my two goals of the highest order.

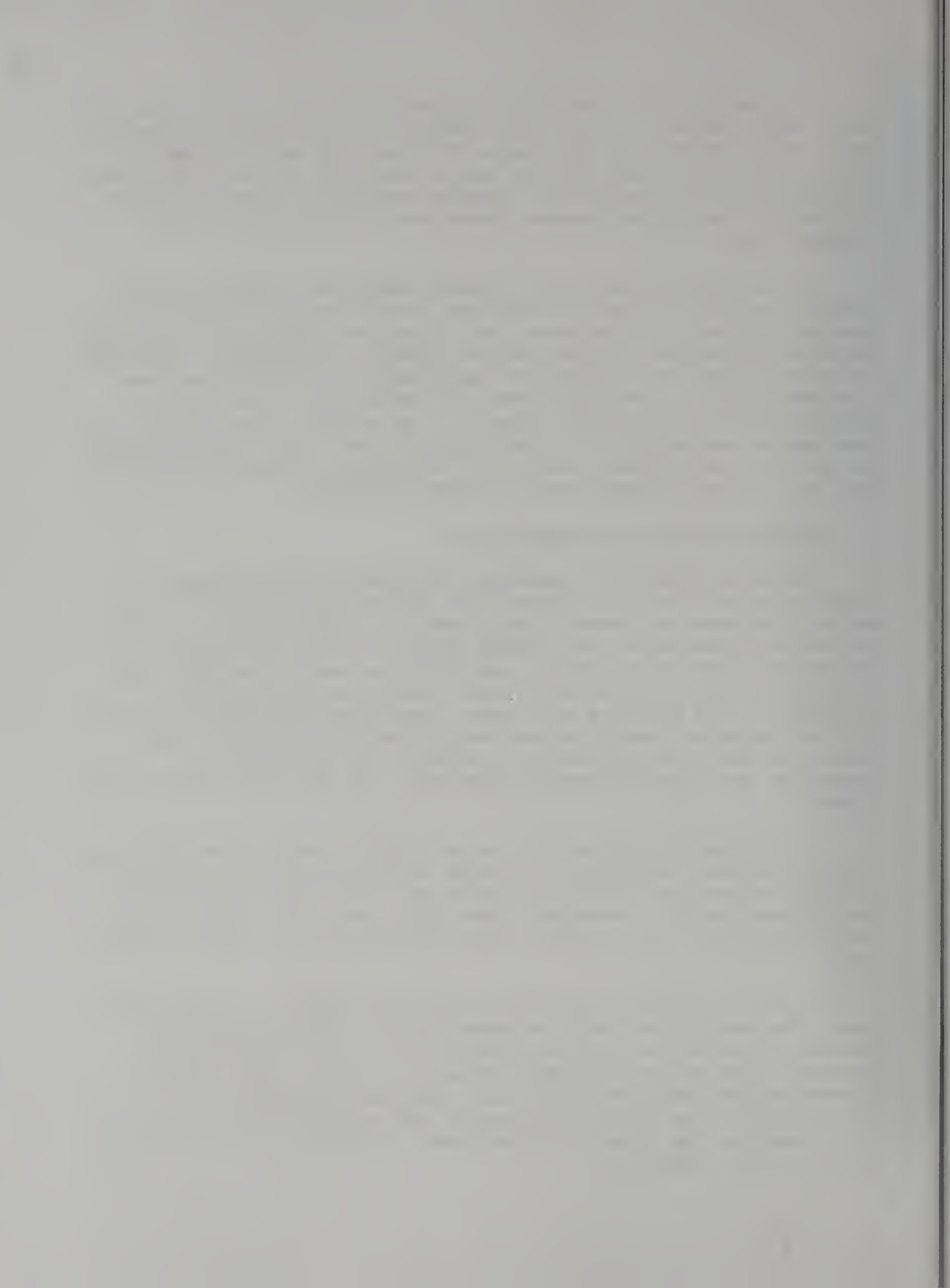
2. As chair of Hastings' Finance Committee I want to make certain our Chief Financial Officer, David Seward, is happy in his job and content with the moral and financial support he receives. David is a treasure. He has single handedly successfully ramrodded millions of dollars in capital improvements at McAllister Tower (100 McAllister), 198 McAllister, 200 McAllister, and now the parking project on the West Block. In my opinion, his services are invaluable and could not be duplicated by any other single person. He must be preserved for Hastings' betterment as long as possible. That will be my primary goal as chair of finance.

#### Student Fees and Financial Aid

The only reason for Hastings' existence is its students. Their care and feeding is central to the accomplishment of the school's mission to educate young people in the law. To this end, as you note, Hastings has a broad range of robust programs of student aid including grants, scholarships, and collectible and forgivable loans. At the McAllister Tower Hastings provides hundreds of its students with safe, comfortable accommodations at well below market rental rates, subsidized by the school. The Tower has been strengthened with seismic retrofitting and extensive new fire-life safety upgrades, all paid for with private funds.

3. The board of directors is striving to keep student fees as low as possible, balancing the needs of the institution with the critical objective of maintaining access to a legal education of the highest quality. Hastings' fees are lower than those of its three sister U.C. law schools, and we will strive to keep it that way.

4. As I noted in response to question number 1., the primary means for keeping Hastings affordable is to enhance existing sources of funds and to create new ones. In this regard fund-raising, also called "friend-raising", is vital. Our current Chancellor and Dean, Mary Kay Kane, has been invaluable in currying existing donors and opening the coffers of new donors. It is my hope our new Chancellor and Dean, Professor Newton, will carry on this tradition.





Legal Education Opportunity Program

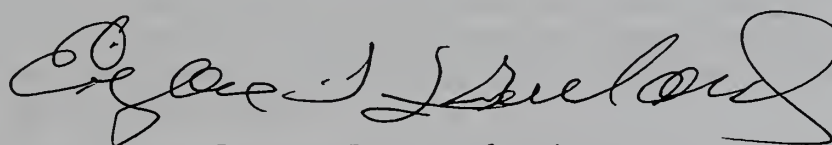
5. I am quite familiar with the Legal Education Opportunity Program (LEOP) and feel that its creation some years ago was a master stroke that further set Hastings apart from most other law schools. While this program has its burdens, exposing Hastings to a somewhat lower standing in the California State Bar's first-time-taker passage ratings, and the school's position in the law school rankings in *U.S. News and World Report*, the benefits to the students, the school and State have far exceeded the burdens. That is not to say the program can't be improved. The faculty and board of directors are currently fine tuning LEOP to further ensure that the use of valuable educational resources is maximized. The results have been most encouraging. In the meantime, LEOP is meeting its goals.

Board and Student Relations

6. At the board's behest Hastings' Student Body President sits at the table at each board meeting and is allowed unlimited time to give a full report regarding student activities and concerns. In addition, all students were offered opportunities to meet and interview the six final candidates for Chancellor and Dean and, indeed, the board hired the students' favorite. Thus, it is clear that Hastings' students' voices are heard loud and clear by Hastings' administration, faculty and board.

I hope my answers to your questions are deemed responsive, and demonstrate my desire and ability to continue serving my alma mater. Senate confirmation of my reappointment by Governor Schwarzenegger will be greatly appreciated. Thank you.

Truly yours,

A handwritten signature in black ink, appearing to read "Eugene L. Freeland". The signature is fluid and cursive, with a large, stylized "E" at the beginning and a long, sweeping tail that loops back under the name.

Eugene L. Freeland



## Al Young

The Honorable Don Perata  
State Capitol  
Room 420  
Sacramento, CA 95814-4900

Dear Mr. Perata,  
and Members of the Senate Rules Committee:

In the short term, I will carry out my duty as California's Poet Laureate; that is, make myself fully available to serve and be present at six official venues. In the long term, I see it as my duty to remind citizens of the Golden State of the importance of poetry in our lives. Reading, hearing and composing poetry, we deepen and grow. In so doing, we thicken the glue that holds together a reflective, compassionate democracy. In my view, poetry ranks with food, shelter and clothing as an essential human need. It is exposure to vivid, creative, freshly turned language – not dead, hollow rhetoric or “received language” – enables each of us to see, think and feel clearly. It is no accident that the world's sacred texts – the Bible, the Torah, the Qur'an, the Upanishads, the Buddhist Sutras – are in essence poetry.

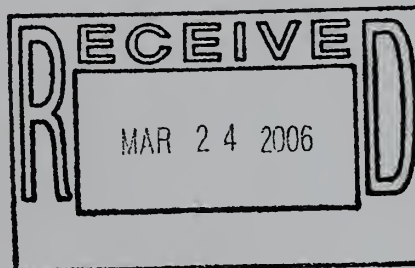
The notion of poetry as an amusement or adornment is one I hope to uproot. Not only is poetry in particular and culture in general crucial to human nutrition, it is actually a kind of “cash crop.” For example, that tourists the world over flock to my native state of Mississippi to attend the Tennessee Williams Festival, the William Faulkner Festival, the Eudora Welty Festival, the Richard Wright Festival, and the Delta Blues Festival – enhances the wealth of this traditionally cotton and timber rich region. I will continue to travel, bringing attention to poetry, encouraging its youthful practitioners and ardent supporters. Given California's colossal treasury of poets, novelists, memoirists, playwrights, screenwriters, musicians, painters, sculptors, actors, dancers, photographers and filmmakers, the state that has given me so much, we are a far richer state than current ratings and rankings of our support of arts and education suggest.

It is further my plan to construct a powerful web site devoted to the California poetry scene and kindred topics. Texts, webcasts, lectures, class discussions, readings performances and announcements – all such content will be accessible on the site I envision. To construct and realize this cyber-forum, I will consult extensively with two enthusiastically supportive state agencies.

It is a privilege and an honor to serve California, which that has given me so much.

Sincerely,

Al Young



### 3. Results and Discussion

The first part of the study was a pilot study to determine the feasibility of the study. The pilot study was conducted with a small group of participants and the results were used to inform the main study. The pilot study found that the study was feasible and that the participants were able to complete the study. The pilot study also found that the study was acceptable to the participants and that the study was acceptable to the researchers.

The main study was conducted with a larger group of participants and the results were used to inform the main study. The main study found that the study was feasible and that the participants were able to complete the study. The main study also found that the study was acceptable to the participants and that the study was acceptable to the researchers.

The results of the study are discussed in the following sections. The first section discusses the results of the pilot study and the second section discusses the results of the main study.

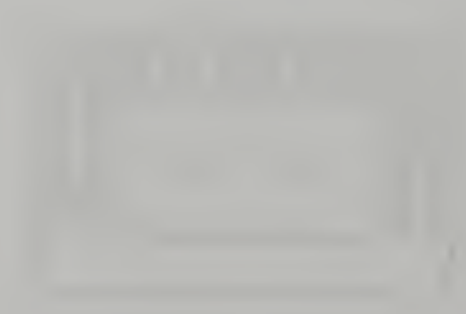


Figure 1: Results of the study showing performance over time.





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26 Evelyn J. Mizak  
27 Shorthand Reporter  
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SENATOR GLORIA ROMERO

DARC D. KELLER, Assistant Secretary

Health Care Policy

Department of Corrections and Rehabilitation

PETER AKOS FARBER-SZEKRENYI, PH.D., Division Chief

Correctional Health Care Services

Department of Corrections and Rehabilitation

INDEXPage

Proceedings ..... 1

Governor's Appointees:

PETER AKOS FARBER-SZEKRENYI, Ph.D., Division Chief  
Correctional Health Care Services  
Department of Corrections and Rehabilitation ..... 1

DARC D. KELLER, Assistant Secretary  
Correctional Health Care Services  
Department of Corrections and Rehabilitation ..... 1

Introduction and Support for Both Nominees by  
SENATOR GLORIA ROMERO ..... 1

## Statements by CHAIRMAN PERATA re:

Pledge to Judge Henderson and  
Receiver ..... 3

Submittals Were Clear and Succinct ..... 3

## Questions by CHAIRMAN PERATA re:

Exit Strategy to Get Out of  
Receivership ..... 3

Aging Inmate Population ..... 6

Percentage of Aging Population ..... 7

Timetable for New Subacute Beds ..... 9

## Statements by SENATOR BATTIN re:

Initial Reaction to Hearing ..... 11

Pleased at Goal to Get Out of  
Receivership ..... 11

Motion to Confirm ..... 12

Committee Action ..... 13

1	Termination of Proceedings .....	14
2	Certificate of Reporter .....	15
3	APPENDIX:      Written Responses to Committee Questions	
4	By Appointees .....	16



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Senator Romero, would you like to call your guests up.

SENATOR ROMERO: Good morning, or good afternoon. Time flies when you're having fun, right.

CHAIRMAN PERATA: Yes, it does.

SENATOR ROMERO: I wanted to make sure that I could come today to say some very positive words on behalf of those nominees to be confirmed in the Department of Corrections and Rehabilitation, Darc Keller and Dr. Peter Farber-Szekrenyi.

The appointment of these two individuals to head up essentially health care --

CHAIRMAN PERATA: Do you want to get an adult chair? You look like you're sitting and being punished. It's up to you.

SENATOR ROMERO: Much better.

CHAIRMAN PERATA: There you go, like the big guys.

SENATOR ROMERO: Feel better now? Feel like an equal?

SENATOR ASHBURN: At least he doesn't need a booster seat.

[Laughter.]

SENATOR ROMERO: They're a breath of fresh air in Corrections. And certainly, you might recall that some of the first very positive words about the Department of Corrections and Rehabilitation that were uttered by Judge Henderson in

1 recent times came because of the capacity and the skills of  
2 these two gentlemen.

3 So, I know you've got a full schedule today, but  
4 I did want to come. You often hear me critiquing the system,  
5 but this is one where I want to give a very positive affirmation  
6 for the work and the commitment and the integrity of these two  
7 individuals. And I look forward to working with them to pull us  
8 out of receivership at the earliest opportunity.

9 So, we're in good hands with them.

10 CHAIRMAN PERATA: Thank you, Madam Leader.

11 Thank you for doing this.

12 First of all, I'd like to welcome you and to  
13 assure you that my leaving in a little while has got nothing to  
14 do with you. The Governor is having a press conference, and I  
15 always like to go and follow him around. I think he calls me  
16 his key grip, which I hope is a movie term.

17 [Laughter.]

18 CHAIRMAN PERATA: I know one thing, I ain't going  
19 to be his best boy.

20 [Laughter.]

21 CHAIRMAN PERATA: This is what we do here.  
22 You're probably already wondering why are you here. You're  
23 doing serious work, and we're not.

24 We're both pleased to have both of you here and  
25 the experience that you bring to the enterprise. You've been  
26 accountable for quality patient care and effective fiscal  
27 controls, and Lord knows, we need that.

28 We've talked to the receiver. We've visited with

1 Judge Henderson. And we've pledged to them that what we would  
2 like to do is work with you, and recognize that when the  
3 receivership ends, the responsibility of the state continues.  
4 So, we see it as a partnership.

5 I believe we have a pretty clear understanding of  
6 the scope of the mandate, and that we're really in the position  
7 of being supplicants right now. But we want to do everything  
8 that we can.

9 This is just sort of the baptism. We're going to  
10 go through the religious thing. We have the rest of the  
11 sacraments to follow.

12 MR. KELLER: Except last rights.

13 [Laughter.]

14 CHAIRMAN PERATA: Except the last rights.  
15 You're going to fit in really well.

16 I wanted to ask a couple of fundamental  
17 questions.

18 By the way, the submittals that you gave us were  
19 wonderful. I think it addressed clearly and succinctly what was  
20 asked. Lest anybody believe that we're not going into as many  
21 areas as we should, I'd just refer everybody to the printed  
22 page.

23 Health care in our adult institutions is under  
24 the receivership. And the question we have is, we'd like to see  
25 an exit strategy. And early on, we'd like to know what that is.  
26 If you have that now, it'd be great to talk a little bit about  
27 it. If not, when do you think that might emerge?

28 DR. FARBER-SZEKRENYI: Certainly, I can respond

1 to that and that situation, and so will Darc.

2 I'm Dr. Peter Farber-Szekrenyi. I'm the handsome  
3 one.

4 [Laughter.]

5 CHAIRMAN PERATA: And he's the younger one.

6 DR. FARBER-SZEKRENYI: That's right, absolutely.

7 MR. KELLER: And I'm Darc Keller.

8 And by the way, as Peter describes the exit  
9 strategy, everything we're doing right now, even before the  
10 receiver was appointed, leads in that direction.

11 CHAIRMAN PERATA: Thank you.

12 DR. FARBER-SZEKRENYI: I think in terms of the  
13 exit strategy, the court mandate as far as the Plata is  
14 concerned with Coleman and Perez, which are the major orders  
15 that we have, is predicated upon the fact that we provide  
16 constitutionally mandated care to community standards, whatever  
17 that's defined as.

18 The receiver certainly will be defining over a  
19 period of time what he considers to be those indices that will  
20 indicate our compliance with constitutional standards of care.

21 We have already started developing what we think  
22 would be appropriate standards, and hopefully the receiver will  
23 look at those and accept those as his standards also.

24 In addition to that, the second criteria for the  
25 receiver to leave is that we will have a system that will be  
26 able to sustain itself once he leaves and reverts back to the  
27 state.

28 This is where we're going to need your help in



1 the Legislature to work with us to how we get to that system,  
2 because in my opinion, going back to the present way that it's  
3 constituted right now, health care being part of CDCR is not  
4 going to do that.

5 The system the way it's set up right now, health  
6 care is a very small component of the total. And as such, the  
7 relationship and the bureaucracy that goes with the present  
8 system, the health care is too fast and too, how would I say,  
9 acute in a certain sense to stay within the health care system  
10 overall in terms of the state bureaucracy to get through and  
11 provide the mandated care. So, we're going to have to find a  
12 different system, how it exists within the state separate from  
13 CDCR.

14 So, we are looking at now all the policies and  
15 procedures that governs those activities. We're looking at  
16 where budgets, for instance, should be separate for health care  
17 to be responsible and provide the indices and indicators that  
18 you need to see that we appropriately spend the money, and you  
19 get what you paid for. And you see how we progressed from the  
20 current standard where we are, which we all know is not  
21 compliant, to getting up to the standard we need to get to.

22 So, that's what we're doing right now. But I  
23 think we will need your help from the legislative standpoint to  
24 get that system for us set up so we can transition to it.

25 MR. KELLER: I think what Peter's describing is  
26 clearly our strategy. We need to deal with systemic issues  
27 within our operations. And the difference between my side with  
28 policy, and operations with Peter, is very, very thinly veiled.

1 We work very closely together in terms of how we develop these  
2 strategies.

3 One of the things that we recognized early on is  
4 that court orders will not provide a sustainable system. We can  
5 live by court orders for a certain short period of time, but our  
6 goal is to provide direction and change that will allow the  
7 receiver exit and have a sustainable system after they leave.

8 CHAIRMAN PERATA: And I guess you'll create  
9 standards --

10 DR. FARBER-SZEKRENYI: Yes, we are. We intend to  
11 by the end of this fiscal year to have those standards. In  
12 fact, probably in about six months we'll have those standards,  
13 and we'll be going to the Legislative Analyst and reviewing  
14 them, and make sure they're appropriate to all parties  
15 concerned.

16 CHAIRMAN PERATA: The other issue that's vexing  
17 is that we're destined to have an aging population under the  
18 current system. And there has always been the idea that you get  
19 to a certain point, you can't hurt anybody. And that you're  
20 much better suited in a sniff than you would be in jail.

21 Have you wrapped your minds around that yet at  
22 all?

23 DR. FARBER-SZEKRENYI: Yes, we have. I think we  
24 have a strategy on that one, too. And Darc will also make his  
25 comments on that.

26 But basically both Darc and I identified right  
27 from the beginning after we visited the first of our  
28 institutions, we visited approximately about 20 of those

1 institutions by now out of the 33, and it's throughout the  
2 institution we recognize that there are patients in our acute  
3 care beds who are inappropriate to be in there. They should be  
4 in a much lower level of care. And obviously, we're talking  
5 about people who are mostly aged, or people because of their  
6 conditions are there.

7 We have looked at the possibility what do we do  
8 with these people. So we looked at it as a possibility right  
9 now is, down at our campus RJAD, Donovan in Southern California,  
10 we can build about 100 beds that will be subacute care beds we  
11 can transfer these people to.

12 In addition to those people who are no longer a  
13 threat to society, but yet they still have some term left on  
14 their incarceration, we can extend our CTC license, and talked  
15 to licensing people on that one, to the outside and provide  
16 services that way, so they can be incarcerated and provide a  
17 much lower level of care which is cost economical to us.

18 So, we have two-prong attack. One is internally,  
19 provide appropriate beds by building it on site at Donovan,  
20 about 100 beds, as well as outside we can do that. So, we are  
21 looking at both possibilities, depending upon the security  
22 status of that particular patient.

23 CHAIRMAN PERATA: Do we have any numbers on how  
24 many?

25 DR. FARBER-SZEKRENYI: Yeah, we're looking at  
26 about 10 percent of population --

27 CHAIRMAN PERATA: Really?

28 DR. FARBER-SZEKRENYI: Yes, is 50 or over. So,

1 we are going to be --

2 CHAIRMAN PERATA: Wait a minute. We're talking  
3 geriatrics now. We're not talking 50 or older. Come on.

4 [Laughter.]

5 CHAIRMAN PERATA: I'm very sensitive to that.

6 DR. FARBER-SZEKRENYI: At my age, I'm sensitive  
7 to that one, too, but in terms of definition at least from  
8 medical standpoint, we're looking at that because that's where  
9 the age break is. Between 50 and 55, the majority of services  
10 start to be utilized from that perspective.

11 MR. KELLER: Although it's only 10 percent of the  
12 population over 50, it accounts for almost half of the high cost  
13 of care. So, you can see how that dollar value impacts us.

14 Anecdotally, Peter and I were at CIM yesterday,  
15 touring with Mr. Sillen. And there was a gentleman that would  
16 be an ideal candidate, Mr. Washington. We talked with him.  
17 He's an inmate there. He's paraplegic. He's been in that same  
18 acute care room for two years. Doesn't need to be there.

19 We also saw a 78-year-old individual in the  
20 facility, and there is probably a better place for those people.

21 CHAIRMAN PERATA: Well, we urge you on. That's  
22 the kind of thing, you know, perhaps that you could do that we  
23 could never get done.

24 DR. FARBER-SZEKRENYI: And I think it's one of  
25 those kind of things, again, we're going to work with the  
26 Legislature because it's going to cost us so many initially to  
27 put up those beds, but we'll recover those real fast by not  
28 sending them outside, including guarding services and the cost



1 of guarding services.

2 CHAIRMAN PERATA: Do you have any idea of when we  
3 might look forward to having the geriatric, the bedding, set  
4 up?

5 DR. FARBER-SZEKRENYI: I think we can do that  
6 probably within a year-and-a-half, assuming we get proper  
7 approval from appropriate bodies as we go through, or the  
8 receiver will order it. Either way, we will probably --

9 CHAIRMAN PERATA: I'm quite confident that one of  
10 those things will happen.

11 DR. FARBER-SZEKRENYI: Yes. We did go through is  
12 the state system first. We can do that, obviously. To the  
13 extent we can't, then the receiver has other choices to make.

14 CHAIRMAN PERATA: Did you see "Godfather I" where  
15 his brains were his signature? It's kind of the way I feel  
16 dealing with the receiver.

17 DR. FARBER-SZEKRENYI: Let me put it this way. I  
18 report to him 60 percent of the time, so this is what my answer  
19 is, whatever you want to make it.

20 The other 40 percent, I'll agree with you on  
21 that.

22 [Laughter.]

23 MR. KELLER: I think the one-and-a-half year time  
24 table is probably pretty reasonable.

25 One of the issues we face is licensing. And we  
26 have met with Sandra Shewry and her staff, and they've been  
27 excellent. They have given us every opportunity to look at ways  
28 to do it outside of the normal process, within law, but not to

1 extend the timeframe that it takes.

2 And the licensing people we met with were  
3 excellent. So, we're finding a high level of acceptance to  
4 these ideas.

5 CHAIRMAN PERATA: That's always where we could be  
6 helpful, is with any bureaucracy that happens to cash a check  
7 from the State of California.

8 DR. FARBER-SZEKRENYI: We'd like to come back to  
9 you and take you up on that. I think we're going to need  
10 that.

11 CHAIRMAN PERATA: They tend to be responsive.

12 DR. FARBER-SZEKRENYI: Also as part of that  
13 process, since I'm responsible not only just for the Plata side,  
14 but also the mental health and the dental side, Judge Carlton is  
15 looking at the need for these crisis beds, which also we solved  
16 to some extent by moving these patients out to the more  
17 appropriate level. So, he will have within 45 days an  
18 opportunity to review that. If he believes that that's the way  
19 to go, then he could provide a court order to help us with that.

20 CHAIRMAN PERATA: Personally, as much as I'm a  
21 big fan of dentistry, the mental health stuff is extremely of  
22 interest and importance.

23 I meant to ask you before, do you have family  
24 here?

25 DR. FARBER-SZEKRENYI: My daughter is here, and  
26 my grandson is here, Christina.

27 CHAIRMAN PERATA: And the grandson is in the  
28 bucket there.

1 DR. FARBER-SZEKRENYI: Yes, I hope so.

2 CHAIRMAN PERATA: Welcome. The child will never  
3 be the same.

4 I'll open it up to questions from other Members?

5 SENATOR BATTIN: When I first started reading  
6 over your applications or your responses, and saw that you were  
7 up today, I just couldn't help but try to figure out why on  
8 earth we were having this hearing, and what purpose that you  
9 served, no offense, just because we have been taken over by the  
10 courts.

11 In Caucus today, I was reviewing our Rules  
12 Committee Agenda and said to our Members, you know, we have got  
13 two people involved in the Department of the Corrections and  
14 Rehabilitation's Health Care Policy. I don't know what they're  
15 doing.

16 I have to tell you, I'm very happy to hear that  
17 your whole goal and minds are to, without having the receiver  
18 basically telling us what to do, but trying to figure out how to  
19 get out of receivership as quickly as possible.

20 I have great concerns about this court take-over.  
21 I believe it's a blank check.

22 I am probably not as sympathetic as most, as  
23 others. I don't believe that an inmate should have a platinum  
24 plan of health care. I mean, I would settle for just giving  
25 them the same benefits that anybody under Medi-Cal has, and no  
26 more, no less.

27 And I'm afraid that the court doesn't care about  
28 our budget concerns and is going to do whatever they want.

1           So internally, within the controls that we have,  
2   it is nice to see what you said. And what you started with was,  
3   okay, we went to the system. We see that people weren't where  
4   they're supposed to be. We can move them into a more  
5   appropriate level that fits their medical needs but doesn't cost  
6   us all that much money. That's very good to hear.

7           It strikes me, if we had others like you before,  
8   we wouldn't need you now, and we wouldn't be taken over by the  
9   court.

10          So, I'm happy to support your confirmations. I  
11   am also happy that I can now go back to my Caucus and say, Oh  
12   yeah, they do serve a purpose. They're just not pulling down  
13   \$100,000 a year, that they've got a goal, and that they're  
14   working hard to get us out of it, because it is a very difficult  
15   situation. It needs to be fixed as fast as possible.

16          It's not a question, but more of a statement.  
17   With that, I will move the nominations.

18          CHAIRMAN PERATA: You didn't want the court  
19   take-over, this is the son of a federal court judge.

20          SENATOR BATTIN: Yeah.

21          CHAIRMAN PERATA: He learned.

22          SENATOR BATTIN: I was taken over since birth, it  
23   seems.

24                               [Laughter.]

25          CHAIRMAN PERATA: You did really well.

26          DR. FARBER-SZEKRENYI: That you much.

27          CHAIRMAN PERATA: Normally we whip them, but --

28          DR. FARBER-SZEKRENYI: I'm sure you'll get a



1 chance later to do that.

2 CHAIRMAN PERATA: Yes, so someone in that  
3 audience is going to be the beneficiary of this quick service.

4 DR. FARBER-SZEKRENYI: Thank you much.

5 CHAIRMAN PERATA: Unless you want to conclude  
6 with anything pithy or prophetic.

7 MR. KELLER: I don't know about prophetic, but  
8 the chair situation reminds me of being in court once. I was  
9 asked to stand up, and I was already standing.

10 SENATOR ASHBURN: Every day of my life.

11 [Laughter.]

12 SENATOR ASHBURN: I have never been more  
13 enthusiastic for anyone.

14 CHAIRMAN PERATA: Anybody here, it doesn't  
15 matter what you think, but does anybody want to come up? This  
16 would be the classic waste of time, coming up and speaking.

17 Seeing none, please call the roll.

18 SECRETARY WEBB: Ashburn.

19 SENATOR ASHBURN: Aye.

20 SECRETARY WEBB: Ashburn Aye. Bowen.

21 SENATOR BOWEN: Aye.

22 SECRETARY WEBB: Bowen Aye. Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Battin.

25 SENATOR BATTIN: Aye.

26 SECRETARY WEBB: Battin Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Five to zero.

1 CHAIRMAN PERATA: Five-zero, thank you both very,  
2 very much. Congratulations.

3 DR. FARBER-SZEKRENYI: Thank you much.

4 MR. KELLER: Thank you.

5 CHAIRMAN PERATA: Good luck.

6 [Thereupon this portion of the  
7 Senate Rules Committee hearing  
8 was terminated at approximately  
9 2:00 P.M.]

10 --ooOoo--  
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

18<sup>th</sup> IN WITNESS WHEREOF, I have hereunto set my hand this  
day of May, 2006.

  
EVELYN J. MIZAK  
Shorthand Reporter

## APPENDIX



Senate Confirmation  
Response to Senate Rules Committee Questions  
Dr. Peter Farber-Szekrenyi  
May 5, 2006

17

Organizational issues

1. *What are your goals in this position? What do you hope to accomplish?*

The State of California is mandated to provide the inmate population with a constitutional level of health care that is consistent with community standards. As the Director of the Division of Health Care Services, my goal is to fulfill this mandate by creating a health care system that is efficient and cost-effective. The envisioned system will ensure that adequate care is provided in a timely manner using clinical, administrative and management systems that focus on meeting the State's constitutional responsibilities, while assuring that state funds are used in the most effective manner.

2. *What are your top priorities for the state's health care system? How will you measure the progress you are making? How should the Legislature measure your progress?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

In reviewing the entire health care system operated by the Division of Correctional Health Care Services, there are ten priorities that have been identified as critical to the reform of the system and the operation of the medical, mental health and dental programs to constitutional standards of care. The Strategic Initiatives for health care address the need to move towards a standardized and quality managed care system. This will allow for improved efficiencies and mitigation of high cost drivers. The ten priority areas are shown below.

1. Recruitment and retention of providers
2. Improved working conditions

3. Improved contract management systems
4. Improvements in pharmacy services
5. Redesigned organizational structure
6. Improved fiscal management systems
7. Possible consolidation of support functions
8. Create effective custodial – health care Interfaces
9. Create a managed care system for health care delivery
10. Implement automated, computerized information systems

The measure of our progress in reforming the Department's health care delivery system will include the following:

- Achievement of planning and implementation milestones,
- Measures of the system performance as determined by key performance indicators,
- Measures of system and clinical performance as determined by quality management reviews and reports, and
- Measures of health outcomes in our patient population.

3. *Please describe your background. Did you have familiarity with correctional health care when you assumed your current post?*

I have over 35 years of experience in the administration of health care systems. I have a successful track record in managing companies from \$80 million to \$2.5 billion in annual revenues in a variety of ownership structures including governmental, not for profit, for profit and a New York Stock Exchange company. I hold a Doctorate in Healthcare Institution Administration from UCLA as well as two Masters Degrees, a Masters in Public Healthcare Management and an MBA in Finance.

As an experienced health care executive, I have successfully assisted health care systems to achieve and maintain their competitive and profitable positions within their communities. I have both hands on operations experience and financial expertise in managed care, hospital and medical administration settings. I have the

ability to identify and quickly drive key initiatives through an organization, successfully accomplishing target goals.

I have served as the Chief Executive Officer for SCPMG (Kaiser) of Southern California, one of the largest organized managed care systems in the country and served as Chief Executive Officer for three large health organizations: President of Greatwest Hospital, Inc of Santa Ana; the Anaheim/Tustin Hospital Medical Center and the Fountain Valley Hospital and Development Company. I served as the Chief Operating Officer and Chief Financial Officer for the Alameda County Medical Center in Oakland; Vice President of Provider Relations and Administration for the Blue Cross Association of Chicago; and Associate Director for Operations and Finance for UCLA Hospital and Clinics. I have provided consulting services to Kern County Medical Center, San Joaquin Healthcare Services Agency, Salinas Valley Memorial Hospital District, Alameda County Healthcare Services Agency and others.

I have worked within the jail system as the Chairman of the Board of the Orange County Emergency Agency. In that capacity I became knowledgeable about jail based health care operations.

4. *Under the current reorganization plan, the work of the Director of DCHCS is supported at Agency by the Assistant Secretary, Health Care Policy. How are your duties complementary and how do they differ?*

The Director of the Division of Correctional Health Care Services is responsible for the overall direction and operation of the adult health care system. This system has many components including policy, strategic direction, program development, litigation compliance, program operation, and resource management. The reform and redesign being undertaking in the medical, mental health and dental programs will require massive efforts to identify the deficiencies in the current care system and develop solutions and community partnerships that can participate in the redesign of the correctional health care system. The Assistant Secretary plays a critical and supportive role in meeting with our many stakeholders and community agencies and companies that have an interest in participating in the reform of the health care system.



5. *How have you familiarized yourself with correctional health care in California? How many prisons have you visited? With whom did you meet during these visits? What lessons did you learn from these visits?*

The primary goal of the Division of Correctional Health Care Services is the provision of health care services to the inmate population, our patients. Having a complete and first-hand understanding of field operations is critically important to successfully carry out the duties of the Director. Field visits also establish personal relationships with medical and custodial managers and staff who are vital to successfully implementing change and reform.

Management theories and practices unanimously agree that the more opportunity line staff have to participate in organizational development and problem solving, the better the solutions will be and the more support leadership will have for implementing the changes. In an organization that will require major change in systems and cultural norms, it is imperative that the leaders of the health care organization establish and maintain lines of communication with the field.

Since being appointed to the position of Director on December 1, 2005, I have visited 17 of the State's 33 prisons. These have included visits to the prisons facing the most serious challenges with physical plant and staffing issues as well as some of the prisons that have developed exceptional programs for the treatment of patients. I have met with all levels of the custodial and health care management team and staff from the Warden to the Dental Assistants. Each of these visits provides additional information for the development of a clear picture of the characteristics that create this complex system of health care. At each visit, I have seen best practices that can and should be documented and adapted for other institutions. These best practices include superior efforts to provide quality care as well as cost effective practices and procedures. Each visit also identifies serious deficiencies in staffing, physical plant and service availability that need immediate correction. The identification of both critical deficiencies and best practices is combined to create the strategic direction and initiatives developed by the Division.

*CDCR's health care system has been criticized as overly bureaucratic with poor communication between prisons and headquarters.*



6. *What systems changes have you implemented to improve and maintain effective communications between DCHCS and local correctional health care staff?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

Effective communication in a system as large and complex as the Department of Corrections and Rehabilitation is not an easy task. Communication between headquarters and the institutions, and within the institutions has not been effective. Both situations will require improvement in order to create and sustain the system changes that must occur in the health care area. Improving communication will require better information distribution systems and increased opportunities for dialogue and participation in program development and program activities. Improving communication will also require that all staff in the Department begin to understand, acknowledge and act upon the critical inter-relationships between all parts of the Department.

The DCHCS is actively implementing changes to improve communication, expand collaboration and improve understanding by all stakeholders. Some of the changes that are occurring include:

- More frequent meetings with Institutional Health Care Managers, Chief Psychiatrists and Chief Dentists. These meetings are designed to provide critical program information in a timely manner, to obtain input from institutional leadership and to allow institutional staff to discuss issues and solutions among peers.
- Attendance at Warden's Meetings. The Director and Assistant Secretary are regularly attending Warden's Meetings to provide information on health care initiatives and to foster communication on issues of common concern.
- Regular institutional visits. The Director and Assistant Secretary have visited 17 institutions in the last five months. These visits include meetings with

individual wardens, health care managers and staff. The individual site visits open lines of communication and allow health care leadership to see and understand field perspectives on operations and system reforms.

- Changes in organizational structure. The DCHCS has added Statewide and Regional Medical Directors and Statewide and Regional Nursing Directors. These positions, and additional key management positions will provide additional avenues for communication between institutions and headquarters.

Additional initiatives and activities will be required to create the positive and prompt communication channels required for success of health care reforms. These will include improved information distribution processes and increased opportunities for input into program and policy development.

*7. Should health care professionals employed at your institutions have input into policies and procedures? If so, how should it be provided?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

All stakeholders, including health care professionals employed at the institutions, should have opportunities to collaborate and provide input into proposed policies and procedures. Opportunities for input include:

- Participation in Performance Management Committees and Quality Improvement Teams which allows participants to identify emerging healthcare trends and problems, to identify and implement solutions to institutional problems, to develop best practices, and to provide information to headquarters on needed changes in policies and procedures;
- Participation in Headquarters Task Forces, which allows institutional staff to participate in the development of programs, policies and procedures;

- Participation in reviews of draft policies and procedures, which provides an opportunity to provide input; and,
- The DCHCS is looking at organizational structures that will build in more participation by all staff into programs, policies and procedures.

In addition, I regularly obtain views and opinions on policies from Health Care Managers, Chief Medical Officers and others at meetings and at site visits to the institutions.

Stakeholder participation can be improved. Short implementation periods have, in the past, sometimes abbreviated opportunities for field participation. Future development efforts need to incorporate a more extensive level of stakeholder review and participation.



## Strategic Planning

8. *Your "Strategic Initiative Proposal" of February 2006 did not include any mention or reference to any issues related to appropriate dental care for inmates. What are you doing to implement the recent agreement to improve dental care?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Terms and Conditions of the Stipulation Agreement in the *Perez* lawsuit requires a total modification and adjustment to the Dental Program within the California Department of Corrections and Rehabilitation. The new system will be phased-in over the next four years beginning July 1, 2006.

The changes mandated in the Dental Program will be extensive and will include expansion of required dental services and dental treatment time frames. These changes will assure that inmates are provided with preventive services as well as necessary restorative services that have not been adequately available in the past. Developing an infrastructure and a system that will provide these expanded service requirements will have a major impact on resources, including:

- The need for major space additions and renovation of existing space,
- The addition of staff to perform the necessary services and administer the expanded dental system,
- The procurement of new equipment to meet expanded workload and replace antiquated and obsolete equipment,
- The installation of a computerized automated scheduling and tracking system, and,
- The establishment of quality management and performance management systems to assure that the system can collect performance data and regularly identify areas that require further review and improvement.



The total expected cost for the expansion and improvement of the Dental Program will be approximately \$50 million over a four-year period. Currently, \$21.5 million operating funds and \$4.9 million in capital outlay funds have been allocated and approved for FY 2005/06. The proposed FY 2006/07 Governor's Budget contains additional funds allocated over three years for dental service improvements.

Implementation at the first 14 institutions will begin in July 2006. The Division is taking a proactive approach to the dental implementation and has completed or is in the process of completing, a number of critical foundational elements including:

- The policies and procedures necessary to implement the court mandated Dental Program requirements have been written and adopted. Training on the new policies will occur by June 2006 for the first 14 institutions.
- DCHCS performed full space assessments of all clinical, administrative and support functions of the Dental Program for 10 institutions. The remainder of the institutions will have the same space assessments completed in FY 2006/07. The results of this space assessment will be incorporated into the strategic space planning efforts of the Division.
- The Dental Program has developed an audit instrument that will monitor compliance with the new Dental Program requirements.
- The CDCR is performing a statewide workload study to determine the appropriate staffing levels required to implement a Dental Program that meets Constitutional mandates.
- The DCHCS released protocols for emergency dental services in December 2005. In December 2005 and January 2006 the Division trained the dental staff on the content and implementation of the Dental Emergency Protocols. A dentist is now on-call at each institution to handle after-hours emergencies.
- The Inmate Orientation Handbook has been revised to include information on dental services, including, information on obtaining access to dental services and on dental self care.
- The DCHCS Dental Task Force inventoried and surveyed all dental equipment statewide. The findings of the survey identified non-functional major and minor equipment within the Dental Program. DCHCS requested and received the funding necessary to replace all non-functional dental equipment in FY 2005/06. In addition, funding for a replacement cycle for major and minor equipment within CDCR is included in the Proposed FY 2006/07 Governor's Budget.

- The Dental Program is establishing a Quality Improvement System within DCHCS to ensure the identification and implementation of necessary improvements to the Dental Program.
  - All CDCR institutions have dental floss and fluoridated toothpaste or powder available for inmates for the prevention of periodontal disease.
9. *In the plan you also talk about preventive programs. What preventive programs have been put in place for health, mental health, and dental services? What is the timetable for implementing the full preventative strategy?*

Prevention programs are a critical component of any correction health care system. Many of the inmates have chronic or infectious diseases and high-risk behaviors. Health education and prevention programs can prevent the occurrence of some disease conditions and can limit disease progression. The Division's objective is to develop and implement comprehensive prevention services that include health education, screening, immunizations, chronic care, and case management at every level of care to support the prevention of illness.

Many of these preventive services are now available for patients who have chronic diseases, to help stabilize the patient's condition and decrease the frequency and severity of hospitalizations. The patients receive health education programs such as diabetes and asthma management for their chronic conditions. They also receive screening tests specific to their condition that would assist in arresting any further progression of the condition. Prevention services also include case management of high-risk patients to assure that appropriate services and diagnostic testing are provided in a timely manner.

The Department also operates Inmate Peer Education Programs, where inmates are trained to teach other inmates about the health consequences of high-risk behaviors. This program is especially effective in educating the inmate population about infectious diseases such as Hepatitis and the possible consequences of high-risk behaviors, such as tattooing.

Age and gender specific screening services are provided to all inmates, including evaluation of blood pressure and cholesterol levels, Tuberculosis testing, testing

for sexually transmitted diseases and cancer screenings, including Pap smears and mammography services for female offenders.

The Mental Health and Dental Programs also have prevention components. Mental health clinicians conduct in-depth clinical evaluations of individuals identified in the screening process for diagnosis of serious mental disorder, level of functioning, and necessary level of care, as well as suicide risk. All inmates are also screened in the Reception Center for developmental disabilities and referred for appropriate services.

The Dental Program's Policies and Procedures respond to the *Perez* lawsuit and will provide preventive educational services to inmates including, the importance of daily dental self care in the prevention of dental disease. Dental preventive care includes instruction on the causes of dental disease, toothbrushing and flossing techniques, topical application of fluoride, and oral hygiene aids.

The availability of comprehensive prevention services at all levels of care will continue to improve as the Inmate Medical Services Program, revised Mental Health Program, and the Dental Program are implemented at all institutions.



## Mental Health

10. *What is the current status of the prison mental health services being provided to adult inmates? What outcome measures are being monitored to track the efficacy of these services?*

In 1994 the Division of Correctional Health Care Services, in compliance with the *Coleman* lawsuit, established the Mental Health Services Delivery System. This system provides for both inpatient and outpatient mental health services for inmates with serious mental illness. It is estimated that approximately 19% of the CDCR inmates have a serious mental illness, compared to approximately 6% in the community as a whole. This large population of patients with a need for regular and ongoing mental health care requires a substantial level of resources to develop and maintain this system.

The Mental Health Services Delivery System provides services across five levels of care, with higher levels of care consolidated within a smaller number of institutions to improve access, cost effectiveness, and quality of care. There are standard staffing patterns associated with each level of care to ensure appropriate treatment. The levels of care are described below:

- Correctional Clinical Case Management System (CCCMS): Approximately 85% of the patients identified with a serious mental disorder are enrolled in the CCCMS program. Patients receiving CCCMS services are housed in the General Population and participate on an outpatient basis. CCCMS services include individual counseling, crisis intervention, medication review, group therapy and pre-release planning.
- Enhanced Outpatient program (EOP): The Enhanced Outpatient Program provides the most intensive level of outpatient mental health care. A separate housing unit and structured activities characterize the program for patients who, because of their illness, experience adjustment difficulties in the General Population setting. Eleven institutions maintain EOP housing units.
- Intermediate Care Facility (ICF): The Intermediate Care Facility program provides longer-term intermediate and non-acute treatment for patients with a serious mental disorder who cannot function adequately or stabilize at the EOP level of care. The length of stay is an average of seven months.



- **Acute Psychiatric Program (APP):** This program provides intensive, short-term treatment for patients who suffer from impairment of functioning due to either acute serious mental disorder or acute exacerbation of a chronic serious mental disorder. Patients referred to the APP generally are unable to provide for their basic needs or may be at significant risk of harming themselves or others. Lengths of stay are expected to be less than 60 days. The Department of Mental Health provides the APP beds used by CDCR patients.
- **Mental Health Crisis Beds (MHCB):** Mental Health Crisis Beds provide short-term crisis intervention in a licensed inpatient facility for patients presenting with acute symptoms of a serious mental health disorder, such as suicidal or self-harming behavior. A patient may be treated in a MHCB for up to 10 days. The primary objective is to evaluate symptoms and recommend follow-up care. DCHCS maintains MHCBs at licensed facilities within the prison system, including General Acute Care Hospitals, Correctional Treatment Centers and a Skilled Nursing Facility.

As discussed in the response to question 11, the Department has experienced difficulties in fully implementing the Mental Health Services Delivery System, primarily due to staffing deficiencies and lack of an adequate number of mental health beds.

The program monitors efficacy through the Division's Performance Management System. Mental health indicators that reflect compliance with the policies and provision of the Mental Health Services Delivery System are regularly examined, as well as other management indicators such as bed use and service availability.

*11. In October 1994, U.S. District Judge Lawrence Karlton of Sacramento issued a contempt order against the State for failing to provide adequate care for mentally ill inmates. What is the status of compliance with this Coleman Case decree issued by Judge Lawrence Karlton?*

The Mental Health Program operated by the Division of Correctional Health Care Services has been under a Federal Court Order since 1995 which mandated the development and implementation of an extensive system to provide mental health services to the Department's incarcerated population. This system includes

screening for mental disorders and a full range of services from outpatient care through long term and crisis inpatient services.

Adhering to the court requirements has been difficult due to factors similar to the medical program – insufficient staff, low salaries for clinical staff, and insufficient and inadequate space. We must, however, overcome these obstacles and provide the required constitutional level of care to this population.

The availability of appropriate mental health services is critical to the Department. Over 19% of the inmate population, almost one in five inmates, has been diagnosed with a serious mental disorder and require regular and ongoing treatment.

The Division's focus for the mental health program is to provide adequate levels of service, to achieve compliance with the *Coleman* Court Order and to find sustainable solutions for the major problems impacting the Division's ability to provide services. The Division has achieved some success toward this goal in the past few weeks. The Division developed a plan for addressing the unmet need for inpatient mental health beds that was approved by the *Coleman* Court on April 26, 2006. This plan details bed expansion strategies, which includes the conversion of acute care inpatient beds to Correctional Treatment Center beds that can be used for mental health patients and the construction of additional beds. The Division is also developing short-term plans to address the current critical need for additional Intermediate Care and Crisis Beds for mental health patients. We expect to implement additional changes in the mental health program including increasing compensation levels and staffing allocations for this program.

We intend to work closely with the *Coleman* Special Master, the Receiver for the *Plata* lawsuit and the Federal Court for the *Perez* lawsuit to assure that the individual program initiatives and strategies are coordinated and make the best use of resources.

## Aging Inmates

*California's prison population includes an increasing number of aging and geriatric inmates, including some prisoners who have been declared clinically "brain-dead". Many of these severely incapacitated inmates have remained incarcerated in facilities (CTCs) intended for acute medical conditions.*

### 12. *How will you address this problem? What is your timetable?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The number of aging and geriatric inmates is increasing and it is a critical priority to assure that the needs of this population are identified and that appropriate services are available. Inmates over 50 years of age comprise approximately 10% of the population. The inmate population generally has a higher incidence of disease and often the debilitating effects of chronic disease are seen at a younger age.

In coordination with the Assistant Secretary for Health Care Policy, the Division of Correctional Health Care Services is developing strategies to address the needs of this population. One strategy under consideration is the development of Correctional Treatment Centers (CTCs) outside the prison that could be used for the inmate population as well as for hard to place parolees. Another strategy is establishing Medi-Cal eligibility prior to parole to assist in health care placement upon parole. The Division also uses compassionate release provisions to allow terminal inmates to be released from prison and housed outside the institutions.

The DCHCS has made significant progress in developing additional housing facilities for geriatric inmates within the prison system. In September 2005, a Long-Term Care Center of Excellence was established at the California Medical Facility (CMF). In addition, we are currently working on the feasibility of establishing a 100 bed Long Term Care Facility at Richard J. Donovan State Prison in



San Diego that will include a geriatric component. The Department is presently involved in aggressive planning to provide suitable physical plant enhancements to address the elderly care population as part of the population management. The DCHCS has contracted for an elderly care needs assessment and bed analysis. We expect to receive the final report in the near future.



13. *Department executives have indicated repeatedly that they are searching for a facility where geriatric inmates can be housed. What progress has been made toward that goal? What role do you play in this? Is it something you hope to accomplish in the near future?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS has made significant progress in developing additional housing facilities for geriatric inmates. In September 2005, a Long-Term Care Center of Excellence was established at the California Medical Facility (CMF). This specialized housing unit, known as the Elderly Care Unit, is a 21-bed unit licensed as a Correctional Treatment Center (CTC) within the CMF hospital. Specialized staffing for the unit includes a Geriatric Nurse Practitioner, a Physical Therapist, and a Geropsychologist. The most common medical conditions of the Unit's patients are dementia and stroke. Other common diagnoses include amyotrophic lateral sclerosis (ALS, commonly know as Lou Gehrig's disease), and multiple sclerosis (MS). The unit is highly praised by Court Experts and the Prison Law Office, and is a model for other CDCR facilities.

As the Director and the Assistant Secretary for Health Care Policy, we are highly involved in the identification of opportunities and the development of strategic initiatives and applications that will create additional resources for patient populations with unmet needs. We are currently working on the feasibility of establishing a 100 bed Long Term Care Facility at Richard J. Donovan State Prison in San Diego that will include a geriatric component. The Department is presently involved in aggressive planning to provide suitable physical plant enhancements to address the elderly care population as part of the population management. The DCHCS has contracted for an elderly care needs assessment and bed analysis. We expect to receive the final report in the near future.

14. *Your strategic plan also recommends the exploration of establishing community-based facilities for ex-inmates. What advice and expertise have you gathered to guide you in this project?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS is considering an approach that would establish Correctional Treatment Centers (CTCs) in facilities outside CDCR institutions. These CTCs would be capable of providing mental health, medical and dental services to the inmate population as well as parole violators with immediate health care needs. A free standing CTC would allow custodial efforts to focus on health care custodial needs and would allow the development of more efficient ways to manage the provision of care.

There are potential benefits with regard to parolee care. Parole violators primarily in need of mental health or medical services could be placed in CTCs, reducing the need and cost associated with prison placement. Parolees could also receive interim services at a CDCR CTC if a parolee is in jeopardy of violating parole primarily due to unmet health care needs. One key element of this proposal is the establishment of Medi-Cal eligibility prior to the parole and discharge of the inmate. The DCHCS is working with the Department of Health Services and the Social Security Administration to develop new policies and procedures to provide for eligibility determinations while inmates are still incarcerated. This would allow CDCR to be reimbursed for services provided to Medi-Cal eligible parolees and would provide service centers for difficult to place parolees.

This proposal is in the initial stages of consideration. As the possibility is fully explored, the DCHCS will seek advice and expertise from other states, correctional health care experts, and custodial experts.

## Plata

*In 2001, the Prison Law Office filed a class-action lawsuit on behalf of Marciano Plata and eight other inmate plaintiffs. Under a stipulated agreement, the State was required to take a number of steps to improve health care. After a series of court orders, U.S. District Court Judge Thelton Henderson announces last June he was naming a trustee to take over the delivery of health care to inmates in California's 33 prisons. On October 3, he formalized his order, citing "incompetence and outright depravity in the rendering of medical care." Earlier this year, he named Robert Sillen as the federal receiver.*

15. *Please explain your working relationship to the federal receiver, Mr. Sillen, Special Master Hagar, and Judge Henderson. Please include an explanation of how you may work together. Are there functions that you (sic) in healthcare that are independent of the receiver and special master? Do you have the responsibility and authority to review the receiver's recommendations and the court's orders for cost effectiveness? If you do not have the authority, does anyone in the Administration retain that authority?*

Pursuant to the orders of the Federal Court of June 30, 2005 and February 14, 2006, the medical health care services of the department have been placed under the control of a Federal Receiver. All persons responsible for, or involved in, the provision of medical care report to the Receiver. On December 1, the Court ordered the Governor to appoint a person to be in charge of the Department's health care. I was appointed by the Governor to be that person. The subsequent order of the Court appointing the Receiver did not vacate the order directing the Governor to appoint a director of health care. Therefore, I remain the Governor's point person for all CDCR health care, including areas not covered by Plata such as mental health care and dental care, while at the same time reporting to the Receiver who is responsible for physical health care.

Fulfilling this role requires a careful balancing. I am an appointee of the Governor responsible to the Administration and the people of this State. At the same time a Federal Receiver now directs many of my major activities. The goal of the Federal Receiver is to fix an admittedly broken prison health care system so that it provides constitutionally adequate health care. My role as the Director of the Division of



Correctional Health Services is to work with the Receiver to ensure that this goal is achieved expeditiously and in a cost effective manner.

The Receiver has made it very clear that he believes that there is virtually nothing that State Government cannot do, if it has the will and vision to do it. Quite simply, my role in working with the Receiver is to direct the activities of this Department and to work with the Administration and the Legislature so that as much as possible can be achieved by the State without the need for the Receiver to intervene directly. I say this with full knowledge that the system that currently exists cannot do this. It lacks the personnel and the knowledge of how to do what needs to be done. Therefore, in the beginning stages of the Receivership, I will be working closely with the Receiver to bring into this the Department, the people and systems capable of getting the job done. I expect our working relationship to be one that evolves over time; as the Department develops the capacity to deliver quality care, I expect that the responsibilities will shift over time from the Receiver to me.

As noted above, there are two major areas in the Division of Correctional Health Services that remain outside of the Receivership – mental health care and dental care. In addition, as the ability of the Department to manage physical medicine improves, in the eyes of the Court and the Receiver, the Receiver is likely to begin returning areas that have been under his control to the Department.

I believe that as a State Official, I have the duty to review the Receiver's recommendations for cost effectiveness. My greatest impact in that area, however, is likely to be up front – before the recommendation is made. My intent is to work side-by-side with the Receiver to ensure that his recommendations will be cost effective. Court Orders are a different matter. They cannot be modified by the State without further order of the Court. That is why it will be critical for me to work closely with the Receiver to ensure that all recommendations made to the Court reflect the most cost effective means of solving the problem.

16. *How will the State be able to determine when the goals of the court order have been achieved? What measurable outcomes will you use to determine when the goals of the court have been achieved? How will you ensure that the improvements required by the court become part of the ongoing health care system at CDCR?*



In general, the goals of the Court will be achieved when the Department has developed and implemented sustainable health care systems that provide a constitutional level of health care that is consistent with community standards of care. The system-wide reforms in *Plata* will necessarily effect all three major program areas, medical, mental health and dental. The major issues that require reform before the goals of the *Plata* Court can be achieved are: recruitment and retention of qualified clinical and administrative staff; the provision of an adequate physical plant in which to provide services; contracting and other delivery systems to assure that all necessary services are available; coordination with custodial functions and staff to assure timely access to necessary health care services, and adequate discharge planning to support the overall department goal of reduced recidivism.

Ensuring that improvements implemented in health care are sustainable is a major goal for the Division. Sustainability will require that all new systems have appropriate structures, well developed and documented processes, and data collection systems that assure that outcomes and system performance can be regularly assessed and monitored. Each area of the medical, mental health and dental programs will require the development of evidenced-based performance measures. Appropriate structures and system processes will require the implementation of standardized and comprehensive program development methodologies that involve field staff in the program development and implementation strategies.

It is my understanding that the Receiver will also develop his own performance indicators to measure outcomes. He will make his recommendation to the Court as to when we have attained his "goals" and have the capability to sustain an ongoing health care system.

## Information Technology

*The Department of Corrections has made only halting progress toward the creation of a state-of-the-art medical IT system.*

### 17. *Please describe in detail the current status of the VISTA system.*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Department is piloting the use of the Vista pharmacy system at three institutions, California Medical Facility, Deuel Vocational Institution, and Mule Creek State Prison. The VistA System (Federal Department of Veterans Affairs Health Information System and Technology Architecture) is a health care management system designed and developed for the Federal Department of Veterans Affairs. VistA contains pharmacy and medication management functions, however some modifications will be necessary to meet the needs of CDCR pharmacy staff.

When fully implemented, this system will contain easily accessible medical and demographic information for every inmate and provider, will provide for continuity of care as patients move between institutions, and will assist in improving treatment outcomes and reducing medication errors. When entering prescription orders, providers will also be presented with clinical prompts for formulary, clinical guideline, and safety adherence.

The first phase of the Pilot is being conducted at the California Medical Facility and includes the proof of concept. Phase II is a rollout of the Pharmacy System at Deuel Vocational Institution and Mule Creek State Prison. Phase II will evaluate the performance of the system in a network environment and evaluate functionality at institutions with different health care missions. As part of the statewide rollout, data line drops are being installed in all patient care and administrative health care

areas of the institutions. This is a major milestone in preparing the institutions for adding functionality to the developing system. There are some infrastructure issues such as electrical capacity that will require attention particularly in older institutions in order to implement electronic solutions.

Major modifications and configuration changes and the interface to the Department's computer system to allow downloading of housing and demographic information are complete. The Department has completed acquiring "Medispan", drug information and interaction software, and interfacing this software with the pharmacy system.

18. *How can many of your proposals, such as the "Jail-based Health Care Intake" be effectively implemented and monitored in the absence of appropriate medical records technology? How do you coordinate with local jails on issues relating to healthcare absent such a tracking system?*

The absence of automated patient information and management systems is a serious obstacle to creating sustainable systems to manage the correctional health care system. Lack of automated, computerized information systems hampers our ability to manage patient care, manage costs and manage administrative functions. Unfortunately, the implementation of automated systems is not a short-term endeavor and it will be necessary to move forward, in many cases, without fully integrated automation support.

While automated systems are pursued, the DCHCS intends to look for strategic opportunities that can improve patient care and improve the health care system. Many of these proposals, such as jail based health care intake, benefit the Department by reducing paperwork and assuring that adequate health care records are available when the inmate is transferred into the state prison system. Success of these systems will require adequate attention to data collection requirements and the development of simplified methods to collect, aggregate and transfer information in a manual environment. However, it is important that we make our information systems function properly in manual mode as we prepare for automation. We can develop solidly designed manual systems that consider effective and expedient information flow while larger automation efforts are developed.



While the development of automated health information systems is a top priority for the Division of Correctional Health Care Services, a critical foundation to any automation is the development of standardized information processes. The development of standardized manual information systems will contribute significantly to the future success of the development of automated systems. Efforts can be made to create streamlined and efficient information systems until such time as automation is available.

*19. How much has been spent on this system to date and what is the proposed expenditure level in the 2006/07 budget? What is your role in implementing this system and who in the department and the rest of the administration provide technical expertise and assistance? What is the timeframe for full implementation of VISTA?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The HCMS project was started in Fiscal Year 2003/04. In Fiscal Year 2003/04 and Fiscal Year 2004/05 redirected funds were used to support the project. The Project received new funding from the General Fund for the 2005/06, 2006/07 and 2007/08 Fiscal Years. The approved HCMS Spring Finance Letter identified the new funding as shown below.

Fiscal Year 2005/06 – \$4,867,000

Fiscal Year 2006/07 – \$4,339,807

Fiscal Year 2007/08 – \$3,078,881

Funding includes new technical and health care positions to develop and support the project. For FY 2005/06, technical positions have been established and filled. Efforts are underway to establish the FY 2005/06 Health Care positions with the



Department of Personnel Administration, and to advertise and recruit qualified individuals.

Project expenses to date are shown below, however, they do not include all expended personnel costs. Fiscal Year 2005/06 expenditures will also include major expenditures on infrastructure.

Fiscal Year 2003/04:	\$ 116,340
Fiscal Year 2004/05:	\$1,015,057
Fiscal Year 2005/06:	\$1,513,073
TOTAL	\$2,644,471

The implementation of this system is a joint responsibility between the Division of Correctional Health Care Services and the Enterprise Information Systems Division. In addition, the Department of Finance Office of Technology Review, Oversight and Security plays a role in project oversight.

The Technical Project Manager (TPM) assigned by the CDCR Enterprise Information Systems Division is responsible for developing and implementing the system. The TPM manages the project contract staff and EIS staff to implement the system. The TPM coordinates the purchase and installation of all network infrastructure and equipment to make the system function.

The DCHCS is responsible for identifying the functionality required to meet business needs and to participate fully in the development of the system. Redirected staff currently provides DCHCS clinical and administrative support to the project. The Project Feasibility Study Report requested six positions for clinical/administrative support and received authorization via a FY2005/06 Spring Finance Letter to establish a User Support Unit.

## Custody

20. *In your view, what is the appropriate role of custody when it comes to health care decision-making? What is the role of the prison warden and other correctional officers in ensuring appropriate healthcare at their facility? How will you ascertain and ensure that healthcare workers obtain appropriate support and cooperation from custodial staff?*

Custody staff plays a critical and important role in the provision of health care to the incarcerated population. The mission of the health care function cannot be successfully fulfilled without the full support of the institution's custody staff.

The custody function supports the health care mission by ensuring patients have timely access to health care staff via the ducat system and that patients are allowed to report to the clinic and other health care treatment locations as scheduled. They securely transport inmates to outside appointments; and transport patients between institutions in order to facilitate access to required health care. Custody staff also frequently request medical staff assistance when an inmate is in need or appears to be in need of health care services. Custody staff, in essence, is part of the multidisciplinary health care team

Part of the Warden's role is to remove barriers that may prevent the Health Care Manager from being successful. The Warden assists the HCM by directing the administrative resources at the institution such as procurement and personnel services. The Warden must include the HCM in all management meetings and ensure that they are an active partner in the management of the institution. Additionally, the Warden must ensure that custody staff are well trained and execute their duties in such areas as suicide prevention, initiation of CPR, Quality Improvement Teams, and Interdisciplinary Treatment Teams.

The Warden and the Health Care Manager jointly assure that management systems and appropriate procedures are in place to ensure health care workers receive appropriate custody support and cooperation. It is important that each institution have systems that alert management when necessary support is not provided and systems that allow for collaborative identification and resolution of problems.

In addition to regular management oversight, there are a number of related monitoring activities. The inmate appeal system can provide an early warning system if custody is preventing or delaying patients' access to care. Quality Management Assistance Teams audit access to care from a system-wide basis by institution and specific area within an institution. The Plaintiff's counsel conducts regularly scheduled monitoring visits and Court appointed medical experts conduct reviews of institutional compliance with the DCHCS policies and procedures. Lastly, CDCR's internal investigation process can provide information as well. All of these areas combine to provide management with a wide range of input about the system's effectiveness.



## Telemedicine

21. *Which prisons currently use telemedicine? For which specialties is it used? Are there plans to expand its use?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Telemedicine Services Program provides psychiatry and medical specialty services to inmates in CDCR adult institutions. Since inception of the program in 1997, over 52,000 services have been provided to 26 institutions through telemedicine. Currently, 19 institutions are using Telemedicine Services as shown below.

Avenal State Prison	Folsom State Prison
California Correctional Center	High Desert State Prison
California Correctional Institute	Mule Creek State Prison
California State Prison, Corcoran	North Kern State Prison
California State Prison, Los Angeles County	Pelican Bay State Prison
California State Prison, San Quentin	Pleasant Valley State Prison
California State Prison, Solano	Salinas Valley State Prison
Centinela State Prison	Sierra Conservation Center
Central California Women's Facility	Valley State Prison for Women
Deuel Vocational Institution	

Approximately half of the services provided by the Telemedicine Services Program are psychiatry services and the other half is medical specialty services. The program has provided 29 different specialties; however, the most commonly used are: Chronic Infectious Disease, Orthopedics, Dermatology, Endocrinology, Neurology, Neurosurgery and Pain Management.



The Telemedicine Services Program will be expanded to provide additional medical specialty services as well as additional psychiatry services. Currently three additional institutions are scheduled to begin receiving telemedicine services in the next few months. The Telemedicine Services Program works closely with the University of California, Davis to obtain medical specialty services. The Program is working with other providers as well to make additional specialty services available through telemedicine.

## Pharmaceuticals

### 22. *How will you coordinate pharmaceutical purchases with the Department of General Services?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Department of General Services (DGS) is responsible for negotiating prices and procuring pharmaceuticals for the Department of Corrections and Rehabilitation. The DGS coordinates group pharmaceutical purchasing for members of the Common Drug Formulary Committee (CDFC). Participants include the DCHCS, Division of Juvenile Justice, the Department of Mental Health, Department of Developmental Services, and California State University System. DCHCS coordinates with DGS in the following ways:

- DCHCS provides medication volume and cost data to CDFC participants to assist in the identification of high-cost drug categories. This information is used to guide strategic contract negotiations and modifications to the formulary.
- DCHCS communicates to DGS changes in our patient population (such as increases in the diabetic population or increases in the mental health patient population) that are likely to drive pharmaceutical costs in certain drug categories.
- DCHCS works with the DGS to evaluate and improve generic and prime vendor contract specifications.
- DCHCS provides training to institution health care staff to support formulary adherence, monitors compliance with formulary provisions, and identifies possible formulary improvements.

The newly appointed Federal Court Receiver for medical services initiated a contract for an audit of the CDCR pharmacy operations. The audit encompassed six institutions and included the assessment of all aspects of the medication use process, from selection and procurement to prescribing and administration. The

audit also included an assessment of financial impact, clinical parameters, operational aspects and standard/regulatory compliance. A final report is expected shortly.

*23. What are your current cost-containment measures? Do you have plans for future cost containments? Is there a uniform formulary being used at all 33 prisons? If not, when do you expect that will happen?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS has developed a number of initiatives to reduce pharmaceutical costs and improve quality and value in several high-cost categories. These initiatives seek to optimize prescribing practices, contract rates, formulary compliance, and other aspects of pharmacy operations, medication management, and contract management as shown below:

- Strategic Contract Negotiations: DCHCS collects and analyzes prescription data to determine high-cost pharmaceutical categories and targets those categories in group contract negotiations, for the greatest possible benefit to costs and value.
- Prescribing Guidelines: DCHCS has established prescribing guidelines for a number of medications, thus bringing institutional prescription practices in line with manufacturers' therapeutic dosing recommendations and industry best practices.
- Prescribing Practices: DCHCS monitors prescribing practices in all high-cost categories. DCHCS assesses prescribing practices for alignment with recommended dosing and treatment protocols and encourages the use of best practices through training.
- Disease Management Protocols: DCHCS has developed protocols for the effective treatment of common chronic diseases, such as Tuberculosis and Hepatitis C, to provide direction regarding the appropriate use of drug therapy



regimens. DCHCS has initiated a similar program for management of mental health disorders involving use of Atypical Antipsychotics. DCHCS is participating with multiple state agencies and counties in a CalMEND project to develop a guideline for the treatment of schizophrenia, one of the most expensive mental health conditions to treat. The guideline is expected to standardize treatment in a step approach for multiple state entities that may share the same patients, improving consistency and quality of care while reducing the cost of care. In addition, the University of California, San Diego is developing approximately 20 disease management protocols for release to DCHCS providers in 2006.

Cumulatively, initiatives to improve cost-effectiveness in high-cost pharmaceutical categories have resulted in significant decreases in the CDCR's rate of pharmaceutical spending. Nationally, in the three fiscal years from 2000-2001 through 2002-2003, pharmaceutical costs increased an average of 17.7% per year. However, through a variety of cost mitigating measures, CDCR has slowed the rate of increase, to the extent that final cost data from FY 2004-2005 reflects a 2.1% decrease in drug expenditures over the prior fiscal year.

The DCHCS has had a standardized drug formulary in place since November 2002. However, in January 2006, the CDCR, Department of General Services, Department of Mental Health, Department of Developmental Services, California University System, and several counties established a Common Drug Formulary that is shared by the participating agencies. All 33 institutions within the CDCR operate under the Common Drug Formulary. The DCHCS participates in the Strategic Sourcing Initiative through the Department of General Services to achieve better purchasing rates.

24. *Managed care systems typically use guidelines that set forth a step-by-step process for the administration of medication. Does CDCR have such a process?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.



DCHCS issues prescribing guidelines and disease management protocols to support providers in administering medications in compliance with community standards. Establishing prescribing guidelines will bring institutional prescription practices in line with manufacturers' therapeutic dosing recommendations and industry best practices.

DCHCS has developed protocols for the effective treatment of common chronic diseases, such as Tuberculosis and Hepatitis C, which include direction regarding the appropriate use of drug therapy regimens. DCHCS has initiated a similar program for management of mental health disorders involving use of Atypical Antipsychotics. DCHCS is participating with multiple state agencies and counties in a project for the development of a guideline for the treatment of schizophrenia, one of the most expensive mental health conditions to treat. The guideline is expected to standardize treatment in a step approach for multiple state entities that may share the same patients, improving consistency of care while reducing cost of care. In addition, University of California, San Diego is developing approximately 20 disease management protocols for release to DCHCS providers in 2006.

## Cost Containment

### *25. What efforts have been made to identify inmates with the highest health care requirements and costs?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

A relatively small proportion of the patient population drives the majority of health care needs and expenditures. In the 2006 revision of the Strategic Plan, the CDCR emphasizes several initiatives to improve the identification and treatment of the high-risk patient population, including:

- Comprehensive assessment and classification programs to proactively identify patients with significant risks and special needs, and;
- The establishment of Consolidated Care Centers and Centers of Excellence.

The DCHCS established a Medical High Risk Program in 2005 to identify and appropriately treat patients whose severity of illness, multiplicity of diseases, and poor ongoing disease control qualifies them as high risk. These patients are referred to a primary care provider who is board-certified in Family Practice or Internal Medicine for ongoing care coordination and case management. In 2006, the DCHCS partnered with staff from the University of California, San Francisco (UCSF) to perform High Risk Program screenings, as well as provide consultations to DCHCS providers on the care and management of complex medical cases. High Risk Program reviews have been conducted at 14 institutions.

Mental Health patients are identified at Reception Center (RC) screenings as well as other assessments. Those inmates considered to be high-risk are generally those admitted to the Enhanced Outpatient Program.

The newly developed Inmate Dental Program includes a dental assessment and classification process by which inmates with high-risk conditions will be identified and referred for treatment. In this process, each inmate receives a Dental

Classification score during RC screenings and routine dental assessments. Policies and procedures specify the risk level associated with the Dental Classification score, as well as required timeframes for treatment. For example, patients with a sub-acute or soft tissue condition that is likely to become acute without early intervention must receive treatment within 30 days.

## Juveniles

*26. What is your responsibility in the juvenile system and how do you coordinate with DJJ staff? Who is responsible for juvenile health care?*

As Director of the Division of Correctional Health Care Services, my responsibility is to direct and manage the health care system providing services to the adult offender population residing in state prisons. The responsibility for the juvenile health care system resides with the Chief Deputy Secretary for the CDCR Division of Juvenile Justice.

While the Director of the DCHCS has no direct responsibility for management of the juvenile health care system, it is in the best interest of the state to assure that the two programs coordinate and collaborate on a variety of common issues and concerns. Some of the problems facing the adult health care system, also impacts the juvenile health care delivery system and some of the strategic initiatives currently being developed for the adult health care system have direct applicability to the juvenile health care system. The Department may be able to achieve increased economies of scale by combining adult and juvenile purchasing of pharmaceuticals, supplies and equipment.

By using adult health care system improvements as a foundation, the Department may be able to accelerate the implementation of reforms in the juvenile health care system. For example, system developments, such as automated information systems, may be easily adaptable to the juvenile system. Care systems, such as telemedicine, may be easily transferred to the juvenile system.

The Director of DCHCS works closely with the Assistant Secretary for Health Care Policy to identify initiatives that could be implemented in the juvenile environment.



## Women

### *27. Please describe any unique efforts that are being made regarding health care services to female inmates*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

In 2005, CDCR determined that gender-responsive issues were so important that an Associate Director position and organizational section within CDCR was established under the Division of Adult Institutions. A Gender Responsive Strategies Commission (GRSC) was established as an Advisory Commission to assess and make recommendations on proposed strategies, policies and plans specific to women offenders. The DCHCS has had medical and mental health representation on the commission since its inception.

Identifying and responding to the unique health care needs of the female population is part of the strategic development of a managed health care system. Currently, female patients receive gender specific preventive screening services. The DCHCS plans to improve the medical, mental and dental health programs for female patients by developing health care policies, programs and services to respond specifically to the health care needs of female offenders.

Some proposals under consideration by the CDCR gender-responsive effort that will contain a health care component include:

- Designing a gender responsive substance abuse and emotional, physical and psychological trauma treatment program for female offenders, using a consultant contract;
- Developing and implementing comprehensive educational, vocational and health care treatment programs that consider and treat the whole person; and,
- Developing a "Bonding Mothers with Babies Program" at the California Institution for Women, to allow pregnant female offenders, who meet eligibility requirements, to bond and care for their child for an extended period, in a

specialized unit within the institutional setting. Under this proposal, health care providers will provide direct supervision and services to both mother and infant during their stay in the unit. This program would also include a well-developed discharge-planning element that would provide the patient with community contacts for continued care upon their release from prison.

*28. What are the three most important challenges related to providing appropriate health care to female inmates and how are you addressing them?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The three most important challenges related to the provision of care for female inmates are shown below:

1. Aging Population: Currently, little programming exists to specifically address the needs of the growing geriatric female population from appropriate housing to the treatment and management of medical conditions such as osteoporosis and dementia. The Gender Responsive Strategy Commission Healthcare Sub-Committee is currently addressing various health care issues. The DCHCS is planning to develop and implement policies and procedures specific to the female population. In addition, the Right Prison-Right Mission Project will address Centers of Excellence for female offenders.
2. Health Care Contracts: The DCHCS does not have adequate contracts for the provision of health care including specialty services, mammography services and services for community correctional facilities. Lack of community correctional contracts limits the Department's ability to place non-violent female offenders in alternative models for treatment and rehabilitation. The Right Prison-Right Mission project is planning to house 4,500 female offenders in community beds.
3. Lack of coordinated case management: The DCHCS needs to implement coordinated case management systems to address the healthcare and psychosocial needs of patients. Quality improvement efforts in collaboration with the University of California, along with plans to augment Quality Management Assistance Program staff will facilitate the development of case management activities at the local institutions.



## Contracting

29. *Please describe what efforts you've made to contain the costs of outside health care contracts and consultants, including but not limited to the use of registries.*

*What measures, technical assistance and resources are you providing to the individual prisons to assist them in identifying and contracting with outside healthcare consultants for the treatment of inmates with both acute and chronic healthcare needs? How do these projected expenditures relate to budget allocations for these services?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS is taking a system-wide approach to containing costs of outside health care contracts and consultants. This includes taking a serious look at the rate setting methodologies and negotiating structures currently used to determine reimbursement schedules. It also means that we are looking at the foundation of the care delivery system to design and develop systems that support cost containment efforts.

Currently a number of the strategic initiatives being undertaken by the Division should result in cost containment for contract providers. These initiatives include:

- Developing Centers of Excellence and Consolidated Care Centers, is a major system-wide strategic initiative designed to improve patient care and support cost containment efforts. The Department is developing centers at certain institutions to treat and care for our higher risk patients who require specialized treatment and services. By developing specific locations for the treatment of our higher risk patients, we will be able to develop staff expertise in these areas, thus reducing the need for consultants. In addition, locating higher-risk patients in locations where specialty services are more available should assist in containing the cost of providing these services. Improved patient management reduces complications that can be expensive.



Additionally, stabilizing patients with chronic conditions can reduce acute episodes of illness and reduce complications.

- Raising compensation levels of clinical providers to support the long-term achievement of contract registry cost containment. Compensation levels more commensurate with community salary levels can reduce vacancy rates at the institutions, which in turn reduces the Division's use of contract registry providers.
- Providing better support to the field contract management function. The DCHCS plans to place contract analysts at every institution to assure that the institutions have the staff necessary to negotiate, administer and maintain contract services.
- Improving rate setting and negotiating strategies and skills. The field and headquarters contract analysts will receive specialized contract management training and negotiation skills training that will enable staff to negotiate more competitive rates with providers.

The current budget for contract medical, which was inadequately funded, is \$190,157,215. The projected expenditures are \$398,036,705. This projected deficiency amount has been provided to the Department of Finance.

*30. What is the current status of hemodialysis service? Will you expand in-house services or continue to contract with outside providers?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

Currently, the DCHCS provides hemodialysis services to 161 inmates – 155 males and 6 females. The Department currently has in-house capability for 48 patients. The remaining patients receive services at nearby community dialysis facilities.

It is a priority of the DCHCS to increase the availability of dialysis services that can be provided within the secure perimeter of designated CDCR institutions. On-site

hemodialysis is beneficial to the Department because it eliminates the need for community contracts for outpatient treatment, and minimizes the need for movement of patients, which increases patient well being, reduces risks to public safety and generates significant savings in transportation and custody costs.

The DHCHS is planning to expand in-house hemodialysis capacity, and is researching the feasibility of using mobile hemodialysis services.

## Personnel

*Chief Medical Officers (CMO) and Health Care Managers (HCM) at individual prisons have received little or no training, mentoring, or assistance to effectively perform functions related to their managerial responsibilities.*

31. *What is the present training, including emphasis on budget/fiscal matters, management and leadership that is provided? Do you feel that this training is adequate?*

Training and orientation for the Chief Medical Officers and the Health Care Managers is a critical component in successful management of the correctional health care system. Currently, the training includes Department-sponsored training for supervisors and managers combined with additional leadership training offered through State Government affiliates.

The Department-sponsored supervisor training is required for all supervisors and an advanced supervision program is required for all second-line supervisors. This training includes team building, decision-making and problem solving, effective writing and communication styles, managing fiscal resources, personnel management, and conflict resolution. The 40-hour Management Training Program includes training on legal issues, labor relations, fiscal resources, legislation, and communications. In addition, many of the Health Care Managers participate in the Leadership Academy sponsored by the Department and provided by California State University.

Many CMOs and HCMs are not experienced in health care management and government administrative processes, and may require more detailed instruction on the personnel, fiscal and other administrative and management processes used by State Government and the Department.

The Division provides some additional training through regional and statewide managers meetings, however, additional training designed specifically for new health care administrators and clinical managers will be pursued.

## Space and Equipment Needs

*Throughout the prisons there is a critical shortage of physical space and facilities for direct and support services related to correctional health care. Remodeling and renovation projects are often subject to delays of several years.*

*32. What is your role in the allocation of physical space and the determination of its adequacy? Can you correct problems such as the lack of washbasins for new treatment facilities?*

Space has become a serious and critical issue for the California Department of Corrections and Rehabilitation. The increase in the inmate population has filled most institutions to well beyond capacity. This strains the institution's ability to house and program inmates and impacts the health care system as well. Medical, mental health and dental programs are required to care for the current inmate population in space designed to support substantially fewer inmates. This problem is further exacerbated by the substantial increases in space requirements resulting from court ordered expansion of services in the medical, mental health and dental programs.

It will require the attention of all Departmental managers to adequately assess space needs and develop workable short and long-term solutions. The DCHCS must determine the space needs required for the health care function and participate in Departmental teams and task forces to create space plans. The DCHCS works closely with the Facilities Management Division on Capital Outlay Projects. During construction design, details such as sink placement are determined. During retrofitting of space that will be converted to health care space, the DCHCS will work closely with the Facilities Management Division to assure that health care needs are met. We are currently conducting a joint space study to be completed in 60 days.



Senate Confirmation  
Response to Senate Rules Committee Questions  
Mr. Darc Keller  
May 5, 2006

61

Organizational Issues

*1. What are your goals in this position? What do you hope to accomplish?*

The State of California is mandated to provide the inmate and ward population with a constitutional level of health care that is consistent with community standards of care. As the Assistant Secretary for Health Care Policy, my goal is to provide leadership in the identification and implementation of health care policy that assures adequate care is provided in a timely manner using clinical, administrative and management systems that focus on meeting the State's constitutional responsibilities, while assuring that state funds are used in the most effective manner. The Assistant Secretary will work in collaboration with the Director of the Division of Correctional Health Care Services and the Chief Deputy Secretary of the Division of Juvenile Justice towards achieving these goals.

*2. What are your top priorities for the state's health care system? How will you measure the progress you are making? How should the Legislature measure your progress?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

In reviewing the entire health care system operated by the Division of Correctional Health Care Services, there are ten priorities that have been identified as critical to the reform of the system and the operation of the medical, mental health and dental programs to constitutional standards of care. The Strategic Initiatives for health care address the need to move towards a standardized and quality managed care system. This will allow for improved efficiencies and mitigation of high cost drivers. The ten priority areas are shown below.

1. Recruitment and retention of providers

2. Improved working conditions
3. Improved contract management systems
4. Improvements in pharmacy services
5. Redesigned organizational structure
6. Improved fiscal management systems
7. Possible consolidation of support functions
8. Create effective custodial – health care Interfaces
9. Create a managed care system for health care delivery
10. Implement automated, computerized information systems

The measure of our progress in reforming the Department's health care delivery system will include the following:

- Achievement of planning and implementation milestones,
- Measures of the system performance as determined by key performance indicators,
- Measures of system and clinical performance as determined by quality management reviews and reports, and
- Measures of health outcomes in our patient population.

*3. Please describe your background. Did you have familiarity with correctional health care when you assumed your current post?*

I have over 33 years experience in the administration of health care systems. I have worked in the development, administration and management of complex managed care systems as well as providing consulting services to the United States Navy, Air Force, and Army. My experience includes Vice President of Non-Acute Services at Sutter Health; Vice President of Medicaid Contract Management and Operations at the Foundation Health/Health Net in Sacramento; Vice President/Chief Executive Operating Officer for Valley Health Care Corporation in Sacramento; Chief Executive Officer for the Los Angeles County Medical Association; Chief Executive Officer of a large regional medical center in Idaho; and Regional Manager for Partners National Health Plans, a seven state managed health care system headquartered in Denver, Colorado.

I am currently a Lieutenant Colonel in the United States Air Force Reserve, serving as a consultant for the Surgeon General's Tactical Action Team, Bolling AFB, Washington, D.C. I am presently assigned as the Assistant State Surgeon for Headquarters, California National Guard. I provide support and direction in matters relating to the emergency medical preparedness and unit readiness for statewide disaster response.

I have a Bachelor of Science in Psychology and a minor in Business Management from the University of Utah and a Masters Degree in Health Care Administration from the University of Notre Dame. I have received the Outstanding Young Men of America award in 1975.

While my experience in the correctional health care setting is limited, my experience working in large complex health care systems is substantial and I have extensive experience developing the kinds of managed care systems that are required by the California Department of Corrections and Rehabilitation.



4. *Under the current reorganization plan, the work of the Director of DCHCS is supported at Agency by the Assistant Secretary, Health Care Policy. How are your duties complementary and how do they differ?*

The position of Assistant Secretary for Health Care Policy was established in SB 737 as part of the reorganization of the State's correctional agencies into the Department of Corrections and Rehabilitation. This position is complementary to the Director of the Division of Correctional Health Care Service, who is responsible for the overall direction and operation of the adult health care system.

The Assistant Secretary works in collaboration with the Director to identify and respond to critical policy initiative and concerns. The Assistant Secretary also plays a critical role in identifying broad policy and program need that can be beneficial to the juvenile health care system as well as the adult health care system.

5. *How have you familiarized yourself with correctional health care in California? How many prisons have you visited? With whom did you meet during these visits? What lessons did you learn from these visits?*

Having a complete and first hand understanding of the Department's health care operation is critically important to successfully carrying out the duties of the Assistant Secretary for Health Care Policy. Field visits provide the opportunity to see current operations and to talk with managers and staff about current conditions and needed improvements.

Since being appointed to the position of Assistant Secretary in December 2005, I have visited 15 of the State's 33 prisons. These visits have included prisons facing the most serious challenges with physical plant and staffing issues as well as some of the prisons that have developed exceptional programs for the treatment of patients. Each of these visits provides additional information for the development of a clear picture of the characteristics that create this complex system of health care. At each visit, I have seen best practices that can be documented and adapted at other institutions. These best practices include superior efforts to provide quality care as well as cost effective practices and procedures. These visits also provide information on deficiencies in staffing, physical plant and service availability that need immediate correction, and provide valuable information that will be used when considering new health care policy.



*CDCR's health care system has been criticized as overly bureaucratic with poor communication between prisons and headquarters.*

*6. What systems changes have you implemented to improve and maintain effective communications between DCHCS and local correctional health care staff?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

Effective communication in a system as large and complex as the Department of Corrections and Rehabilitation is not an easy task. Communication between headquarters and the institutions, and within the institutions has not been effective. Both situations will require improvement in order to create and sustain the system changes that must occur in the health care area. Improving communication will require better information distribution systems and increased opportunities for dialogue and participation in program development and program activities. Improving communication will also require that all staff in the Department begin to understand, acknowledge and act upon the critical inter-relationships between all parts of the Department.

The DCHCS is actively implementing changes to improve communication, expand collaboration and improve understanding by all stakeholders. Some of the changes that are occurring include:

- More frequent meetings with Institutional Health Care Managers, Chief Psychiatrists and Chief Dentists. These meetings are designed to provide critical program information in a timely manner, to obtain input from institutional leadership and to allow institutional staff to discuss issues and solutions among peers.

- Attendance at Warden's Meetings. The Director and Assistant Secretary are regularly attending Warden's Meetings to provide information on health care initiatives and to foster communication on issues of common concern.
- Regular institutional visits. The Director and Assistant Secretary have visited 17 institutions in the last five months. These visits include meetings with individual wardens, health care managers and staff. The individual site visits open lines of communication and allow health care leadership to see and understand field perspectives on operations and system reforms.
- Changes in organizational structure. The DCHCS has added Statewide and Regional Medical Directors and Statewide and Regional Nursing Directors. These positions, and additional key management positions will provide additional avenues for communication between institutions and headquarters.

Additional initiatives and activities will be required to create the positive and prompt communication channels required for success of health care reforms. These will include improved information distribution processes and increased opportunities for input into program and policy development.

*7. Should health care professionals employed at your institutions have input into policies and procedures? If so, how should it be provided?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

All stakeholders, including health care professionals employed at the institutions, should have opportunities to collaborate and provide input into proposed policies and procedures. Opportunities for input include:

- Participation in Performance Management Committees and Quality Improvement Teams which allows participants to identify emerging healthcare trends and problems, to identify and implement solutions to institutional problems, to develop best practices, and to provide information to headquarters on needed changes in policies and procedures;
- Participation in Headquarters Task Forces, which allows institutional staff to participate in the development of programs, policies and procedures;
- Participation in reviews of draft policies and procedures, which provides an opportunity to provide input; and,
- The DCHCS is looking at organizational structures that will build in more participation by all staff into programs, policies and procedures.

In addition, I regularly obtain views and opinions on policies from Health Care Managers, Chief Medical Officers and others at meetings and at site visits to the institutions.

Stakeholder participation can be improved. Short implementation periods have, in the past, sometimes abbreviated opportunities for field participation. Future development efforts need to incorporate a more extensive level of stakeholder review and participation.



## Strategic Planning

8. *Your "Strategic Initiative Proposal" of February 2006 did not include any mention or reference to any issues related to appropriate dental care for inmates. What are you doing to implement the recent agreement to improve dental care?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Terms and Conditions of the Stipulation Agreement in the *Perez* lawsuit requires a total modification and adjustment to the Dental Program within the California Department of Corrections and Rehabilitation. The new system will be phased-in over the next four years beginning July 1, 2006.

The changes mandated in the Dental Program will be extensive and will include expansion of required dental services and dental treatment time frames. These changes will assure that inmates are provided with preventive services as well as necessary restorative services that have not been adequately available in the past. Developing an infrastructure and a system that will provide these expanded service requirements will have a major impact on resources, including:

- The need for major space additions and renovation of existing space,
- The addition of staff to perform the necessary services and administer the expanded dental system,
- The procurement of new equipment to meet expanded workload and replace antiquated and obsolete equipment,
- The installation of a computerized automated scheduling and tracking system, and,
- The establishment of quality management and performance management systems to assure that the system can collect performance data and regularly identify areas that require further review and improvement.



The total expected cost for the expansion and improvement of the Dental Program will be approximately \$50 million over a four-year period. Currently, \$21.5 million operating funds and \$4.9 million in capital outlay funds have been allocated and approved for FY 2005/06. The proposed FY 2006/07 Governor's Budget contains additional funds allocated over three years for dental service improvements.

Implementation at the first 14 institutions will begin in July 2006. The Division is taking a proactive approach to the dental implementation and has completed or is in the process of completing, a number of critical foundational elements including:

- The policies and procedures necessary to implement the court mandated Dental Program requirements have been written and adopted. Training on the new policies will occur by June 2006 for the first 14 institutions.
- DCHCS performed full space assessments of all clinical, administrative and support functions of the Dental Program for 10 institutions. The remainder of the institutions will have the same space assessments completed in FY 2006/07. The results of this space assessment will be incorporated into the strategic space planning efforts of the Division.
- The Dental Program has developed an audit instrument that will monitor compliance with the new Dental Program requirements.
- The CDCR is performing a statewide workload study to determine the appropriate staffing levels required to implement a Dental Program that meets Constitutional mandates.
- The DCHCS released protocols for emergency dental services in December 2005. In December 2005 and January 2006 the Division trained the dental staff on the content and implementation of the Dental Emergency Protocols. A dentist is now on-call at each institution to handle after-hours emergencies.
- The Inmate Orientation Handbook has been revised to include information on dental services, including, information on obtaining access to dental services and on dental self care.
- The DCHCS Dental Task Force inventoried and surveyed all dental equipment statewide. The findings of the survey identified non-functional major and minor equipment within the Dental Program. DCHCS requested and received the funding necessary to replace all non-functional dental equipment in FY 2005/06. In addition, funding for a replacement cycle for major and minor equipment within CDCR is included in the Proposed FY 2006/07 Governor's Budget.
- The Dental Program is establishing a Quality Improvement System within DCHCS to ensure the identification and implementation of necessary improvements to the Dental Program.
- All CDCR institutions have dental floss and fluoridated toothpaste or powder available for inmates for the prevention of periodontal disease.

9. *In the plan you also talk about preventive programs. What preventive programs have been put in place for health, mental health, and dental services? What is the timetable for implementing the full preventative strategy?*

The Department's Strategic Plan for health care includes objectives relative to health care assessment services, standardized levels of care, and preventive services. Providing preventive services is a foundational principle for health care systems and is necessary for the State's correctional health care system as well. Preventive services save lives and save dollars. Programs designed to reduce harmful lifestyle and behaviors are very important in the correctional health system because many of the inmates engage in high-risk behaviors. Screening programs for early diagnosis are also a necessary component of a prevention program. Health education programs that assist in preventing the further deterioration of a condition also support patient well being and can avoid costs.

The Division of Correctional Health Care Services has many prevention programs in place including age and gender specific screening programs, health education programs, disease management programs, and high-risk behavior prevention programs. The Division needs to expand health education and prevention programs at all levels of care, including programs that incorporate the use of inmate peer educators to educate inmates with high-risk behaviors.



## Aging Inmates

*California's prison population includes an increasing number of aging and geriatric inmates, including some prisoners who have been declared clinically "brain-dead". Many of these severely incapacitated inmates have remained incarcerated in facilities (CTCs) intended for acute medical conditions.*

### *10. How will you address this problem? What is your timetable?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The number of aging and geriatric inmates is increasing and it is a critical priority to assure that the needs of this population are identified and that appropriate services are available. Inmates over 50 years of age comprise approximately 10% of the population. The inmate population generally has a higher incidence of disease and often the debilitating effects of chronic disease are seen at a younger age.

In coordination with the Assistant Secretary for Health Care Policy, the Division of Correctional Health Care Services is developing strategies to address the needs of this population. One strategy under consideration is the development of Correctional Treatment Centers (CTCs) outside the prison that could be used for the inmate population as well as for hard to place parolees. Another strategy is establishing Medi-Cal eligibility prior to parole to assist in health care placement upon parole. The Division also uses compassionate release provisions to allow terminal inmates to be released from prison and housed outside the institutions.

The DCHCS has made significant progress in developing additional housing facilities for geriatric inmates within the prison system. In September 2005, a Long-Term Care Center of Excellence was established at the California Medical Facility (CMF). In addition, we are currently working on the feasibility of establishing a 100 bed Long Term Care Facility at Richard J. Donovan State Prison



in San Diego that will include a geriatric component. The Department is presently involved in aggressive planning to provide suitable physical plant enhancements to address the elderly care population as part of the population management. The DCHCS has contracted for an elderly care needs assessment and bed analysis. We expect to receive the final report in the near future.

*11. Department executives have indicated repeatedly that they are searching for a facility where geriatric inmates can be housed. What progress has been made toward that goal? What role do you play in this? Is it something you hope to accomplish in the near future?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS has made significant progress in developing additional housing facilities for geriatric inmates. In September 2005, a Long-Term Care Center of Excellence was established at the California Medical Facility (CMF). This specialized housing unit, known as the Elderly Care Unit, is a 21-bed unit licensed as a Correctional Treatment Center (CTC) within the CMF hospital. Specialized staffing for the unit includes a Geriatric Nurse Practitioner, a Physical Therapist, and a Geropsychologist. The most common medical conditions of the Unit's patients are dementia and stroke. Other common diagnoses include amyotrophic lateral sclerosis (ALS, commonly know as Lou Gehrig's disease), and multiple sclerosis (MS). The unit is highly praised by Court Experts and the Prison Law Office, and is a model for other CDCR facilities.

As the Director and the Assistant Secretary for Health Care Policy, we are highly involved in the identification of opportunities and the development of strategic initiatives and applications that will create additional resources for patient populations with unmet needs. We are currently working on the feasibility of establishing a 100 bed Long Term Care Facility at Richard J. Donovan State Prison in San Diego that will include a geriatric component. The Department is presently involved in aggressive planning to provide suitable physical plant enhancements to address the elderly care population as part of the population management. The DCHCS has contracted for an elderly care needs assessment and bed analysis. We expect to receive the final report in the near future.

*12. Your strategic plan also recommends the exploration of establishing community-based facilities for ex-inmates. What advice and expertise have you gathered to guide you in this project?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS is considering an approach that would establish Correctional Treatment Centers (CTCs) in facilities outside CDCR institutions. These CTCs would be capable of providing mental health, medical and dental services to the inmate population as well as parole violators with immediate health care needs. A free standing CTC would allow custodial efforts to focus on health care custodial needs and would allow the development of more efficient ways to manage the provision of care.

There are potential benefits with regard to parolee care. Parole violators primarily in need of mental health or medical services could be placed in CTCs, reducing the need and cost associated with prison placement. Parolees could also receive interim services at a CDCR CTC if a parolee is in jeopardy of violating parole primarily due to unmet health care needs. One key element of this proposal is the establishment of Medi-Cal eligibility prior to the parole and discharge of the inmate. The DCHCS is working with the Department of Health Services and the Social Security Administration to develop new policies and procedures to provide for eligibility determinations while inmates are still incarcerated. This would allow CDCR to be reimbursed for services provided to Medi-Cal eligible parolees and would provide service centers for difficult to place parolees.

This proposal is in the initial stages of consideration. As the possibility is fully explored, the DCHCS will seek advice and expertise from other states, correctional health care experts, and custodial experts.



## Information Technology

*The Department of Corrections has made only halting progress toward the creation of a state-of-the-art medical IT system.*

### *13. Please describe in detail the current status of the VISTA system.*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Department is piloting the use of the Vista pharmacy system at three institutions, California Medical Facility, Deuel Vocational Institution, and Mule Creek State Prison. The VistA System (Federal Department of Veterans Affairs Health Information System and Technology Architecture) is a health care management system designed and developed for the Federal Department of Veterans Affairs. VistA contains pharmacy and medication management functions, however some modifications will be necessary to meet the needs of CDCR pharmacy staff.

When fully implemented, this system will contain easily accessible medical and demographic information for every inmate and provider, will provide for continuity of care as patients move between institutions, and will assist in improving treatment outcomes and reducing medication errors. When entering prescription orders, providers will also be presented with clinical prompts for formulary, clinical guideline, and safety adherence.

The first phase of the Pilot is being conducted at the California Medical Facility and includes the proof of concept. Phase II is a rollout of the Pharmacy System at Deuel Vocational Institution and Mule Creek State Prison. Phase II will evaluate the performance of the system in a network environment and evaluate functionality at institutions with different health care missions. As part of the statewide rollout, data line drops are being installed in all patient care and administrative health care



areas of the institutions. This is a major milestone in preparing the institutions for adding functionality to the developing system. There are some infrastructure issues such as electrical capacity that will require attention particularly in older institutions in order to implement electronic solutions.

Major modifications and configuration changes and the interface to the Department's computer system to allow downloading of housing and demographic information are complete. The Department has completed acquiring "Medispan", drug information and interaction software, and interfacing this software with the pharmacy system.

- 14. How can many of your proposals, such as the "Jail-based Health Care Intake" be effectively implemented and monitored in the absence of appropriate medical records technology? How do you coordinate with local jails on issues relating to healthcare absent such a tracking system?*

While the development of automated health information systems is a top priority for the Division of Correctional Health Care Services, a critical foundation to any automation is the development of standardized information processes. The development of standardized manual information systems will contribute significantly to the future success in developing automated computerized systems. Efforts can be made to create streamlined and efficient information systems until such time as automation is available.

- 15. How much has been spent on this system to date and what is the proposed expenditure level in the 2006/07 budget? What is your role in implementing this system and who in the department and the rest of the administration provide technical expertise and assistance? What is the timeframe for full implementation of VISTA?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The HCMS project was started in Fiscal Year 2003/04. In Fiscal Year 2003/04 and Fiscal Year 2004/05 redirected funds were used to support the project. The Project received new funding from the General Fund for the 2005/06, 2006/07 and 2007/08 Fiscal Years. The approved HCMS Spring Finance Letter identified the new funding as shown below.

Fiscal Year 2005/06 - \$4,867,000

Fiscal Year 2006/07 - \$4,339,807

Fiscal Year 2007/08 - \$3,078,881

Funding includes new technical and health care positions to develop and support the project. For FY 2005/06, technical positions have been established and filled. Efforts are underway to establish the FY 2005/06 Health Care positions with the Department of Personnel Administration, and to advertise and recruit qualified individuals.

Project expenses to date are shown below, however, they do not include all expended personnel costs. Fiscal Year 2005/06 expenditures will also include major expenditures on infrastructure.

Fiscal Year 2003/04:	\$ 116,340
Fiscal Year 2004/05:	\$1,015,057
Fiscal Year 2005/06:	\$1,513,073
TOTAL	\$2,644,471

The implementation of this system is a joint responsibility between the Division of Correctional Health Care Services and the Enterprise Information Systems Division. In addition, the Department of Finance Office of Technology Review, Oversight and Security plays a role in project oversight.

The Technical Project Manager (TPM) assigned by the CDCR Enterprise Information Systems Division is responsible for developing and implementing the system. The TPM manages the project contract staff and EIS staff to implement the system. The TPM coordinates the purchase and installation of all network infrastructure and equipment to make the system function.

The DCHCS is responsible for identifying the functionality required to meet business needs and to participate fully in the development of the system. Redirected staff currently provides DCHCS clinical and administrative support to the project. The Project Feasibility Study Report requested six positions for clinical/administrative support and received authorization via a FY2005/06 Spring Finance Letter to establish a User Support Unit.

## Custody

*16. In your view, what is the appropriate role of custody when it comes to health care decision-making? What is the role of the prison warden and other correctional officers in ensuring appropriate healthcare at their facility? How will you ascertain and ensure that healthcare workers obtain appropriate support and cooperation from custodial staff?*

The role of custodial staff is critical to the successful operation of the health care delivery system. The Assistant Secretary for Health Policy plays an important role in coordinating health care initiatives and policy with custodial initiatives and policies being developed by the CDCR Division of Adult Operations to assure coordination and advancement of the health care mission.

A Division of Correction Health Care Services top priority is to improve the interface between health care and custody. It is the goal of the Division to achieve a high level of mutual responsibility between health care and custodial staff, to improve access to patients in appropriate timeframes and to develop custodial participation and partnership in the observation and referral of patients for care.



## Telemedicine

*17. Which prisons currently use telemedicine? For which specialties is it used? Are there plans to expand its use?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Telemedicine Services Program provides psychiatry and medical specialty services to inmates in CDCR adult institutions. Since inception of the program in 1997, over 52,000 services have been provided to 26 institutions through telemedicine. Currently, 19 institutions are using Telemedicine Services as shown below.

Avenal State Prison	Folsom State Prison
California Correctional Center	High Desert State Prison
California Correctional Institute	Mule Creek State Prison
California State Prison, Corcoran	North Kern State Prison
California State Prison, Los Angeles County	Pelican Bay State Prison
California State Prison, San Quentin	Pleasant Valley State Prison
California State Prison, Solano	Salinas Valley State Prison
Centinela State Prison	Sierra Conservation Center
Central California Women's Facility	Valley State Prison for Women
Deuel Vocational Institution	

Approximately half of the services provided by the Telemedicine Services Program are psychiatry services and the other half is medical specialty services. The program has provided 29 different specialties; however, the most commonly used are: Chronic Infectious Disease, Orthopedics, Dermatology, Endocrinology, Neurology, Neurosurgery and Pain Management.

The Telemedicine Services Program will be expanded to provide additional medical specialty services as well as additional psychiatry services. Currently three

additional institutions are scheduled to begin receiving telemedicine services in the next few months. The Telemedicine Services Program works closely with the University of California, Davis to obtain medical specialty services. The Program is working with other providers as well to make additional specialty services available through telemedicine.

## Pharmaceuticals

### *18. How will you coordinate pharmaceutical purchases with the Department of General Services?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The Department of General Services (DGS) is responsible for negotiating prices and procuring pharmaceuticals for the Department of Corrections and Rehabilitation. The DGS coordinates group pharmaceutical purchasing for members of the Common Drug Formulary Committee (CDFC). Participants include the DCHCS, Division of Juvenile Justice, the Department of Mental Health, Department of Developmental Services, and California State University System. DCHCS coordinates with DGS in the following ways:

- DCHCS provides medication volume and cost data to CDFC participants to assist in the identification of high-cost drug categories. This information is used to guide strategic contract negotiations and modifications to the formulary.
- DCHCS communicates to DGS changes in our patient population (such as increases in the diabetic population or increases in the mental health patient population) that are likely to drive pharmaceutical costs in certain drug categories.
- DCHCS works with the DGS to evaluate and improve generic and prime vendor contract specifications.
- DCHCS provides training to institution health care staff to support formulary adherence, monitors compliance with formulary provisions, and identifies possible formulary improvements.

The newly appointed Federal Court Receiver for medical services initiated a contract for an audit of the CDCR pharmacy operations. The audit encompassed six institutions and included the assessment of all aspects of the medication use

process, from selection and procurement to prescribing and administration. The audit also included an assessment of financial impact, clinical parameters, operational aspects and standard/regulatory compliance. A final report is expected shortly.



*19. What are your current cost-containment measures? Do you have plans for future cost containments? Is there a uniform formulary being used at all 33 prisons? If not, when do you expect that will happen?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The DCHCS has developed a number of initiatives to reduce pharmaceutical costs and improve quality and value in several high-cost categories. These initiatives seek to optimize prescribing practices, contract rates, formulary compliance, and other aspects of pharmacy operations, medication management, and contract management as shown below:

- Strategic Contract Negotiations: DCHCS collects and analyzes prescription data to determine high-cost pharmaceutical categories and targets those categories in group contract negotiations, for the greatest possible benefit to costs and value.
- Prescribing Guidelines: DCHCS has established prescribing guidelines for a number of medications, thus bringing institutional prescription practices in line with manufacturers' therapeutic dosing recommendations and industry best practices.
- Prescribing Practices: DCHCS monitors prescribing practices in all high-cost categories. DCHCS assesses prescribing practices for alignment with recommended dosing and treatment protocols and encourages the use of best practices through training.
- Disease Management Protocols: DCHCS has developed protocols for the effective treatment of common chronic diseases, such as Tuberculosis and Hepatitis C, to provide direction regarding the appropriate use of drug therapy regimens. DCHCS has initiated a similar program for management of mental health disorders involving use of Atypical Antipsychotics. DCHCS is participating with multiple state agencies and counties in a CalMEND project to develop a guideline for the treatment of schizophrenia, one of the most expensive mental health conditions to treat. The guideline is expected to

standardize treatment in a step approach for multiple state entities that may share the same patients, improving consistency and quality of care while reducing the cost of care. In addition, the University of California, San Diego is developing approximately 20 disease management protocols for release to DCHCS providers in 2006.

Cumulatively, initiatives to improve cost-effectiveness in high-cost pharmaceutical categories have resulted in significant decreases in the CDCR's rate of pharmaceutical spending. Nationally, in the three fiscal years from 2000-2001 through 2002-2003, pharmaceutical costs increased an average of 17.7% per year. However, through a variety of cost mitigating measures, CDCR has slowed the rate of increase, to the extent that final cost data from FY 2004-2005 reflects a 2.1% decrease in drug expenditures over the prior fiscal year.

The DCHCS has had a standardized drug formulary in place since November 2002. However, in January 2006, the CDCR, Department of General Services, Department of Mental Health, Department of Developmental Services, California University System, and several counties established a Common Drug Formulary that is shared by the participating agencies. All 33 institutions within the CDCR operate under the Common Drug Formulary. The DCHCS participates in the Strategic Sourcing Initiative through the Department of General Services to achieve better purchasing rates.

*20. Managed care systems typically use guidelines that set forth a step-by-step process for the administration of medication. Does CDCR have such a process?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

DCHCS issues prescribing guidelines and disease management protocols to support providers in administering medications in compliance with community standards. Establishing prescribing guidelines will bring institutional prescription

practices in line with manufacturers' therapeutic dosing recommendations and industry best practices.

DCHCS has developed protocols for the effective treatment of common chronic diseases, such as Tuberculosis and Hepatitis C, which include direction regarding the appropriate use of drug therapy regimens. DCHCS has initiated a similar program for management of mental health disorders involving use of Atypical Antipsychotics. DCHCS is participating with multiple state agencies and counties in a project for the development of a guideline for the treatment of schizophrenia, one of the most expensive mental health conditions to treat. The guideline is expected to standardize treatment in a step approach for multiple state entities that may share the same patients, improving consistency of care while reducing cost of care. In addition, University of California, San Diego is developing approximately 20 disease management protocols for release to DCHCS providers in 2006.



## Cost Containment

### 21. *What efforts have been made to identify inmates with the highest health care requirements and costs?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

A relatively small proportion of the patient population drives the majority of health care needs and expenditures. In the 2006 revision of the Strategic Plan, the CDCR emphasizes several initiatives to improve the identification and treatment of the high-risk patient population, including:

- Comprehensive assessment and classification programs to proactively identify patients with significant risks and special needs, and;
- The establishment of Consolidated Care Centers and Centers of Excellence.

The DCHCS established a Medical High Risk Program in 2005 to identify and appropriately treat patients whose severity of illness, multiplicity of diseases, and poor ongoing disease control qualifies them as high risk. These patients are referred to a primary care provider who is board-certified in Family Practice or Internal Medicine for ongoing care coordination and case management. In 2006, the DCHCS partnered with staff from the University of California, San Francisco (UCSF) to perform High Risk Program screenings, as well as provide consultations to DCHCS providers on the care and management of complex medical cases. High Risk Program reviews have been conducted at 14 institutions.

Mental Health patients are identified at Reception Center (RC) screenings as well as other assessments. Those inmates considered to be high-risk are generally those admitted to the Enhanced Outpatient Program.

The newly developed Inmate Dental Program includes a dental assessment and classification process by which inmates with high-risk conditions will be identified and referred for treatment. In this process, each inmate receives a Dental



Classification score during RC screenings and routine dental assessments. Policies and procedures specify the risk level associated with the Dental Classification score, as well as required timeframes for treatment. For example, patients with a sub-acute or soft tissue condition that is likely to become acute without early intervention must receive treatment within 30 days.

## Juveniles

*22. What is your responsibility in the juvenile system and how do you coordinate with DJJ staff? Who is responsible for juvenile health care?*

As the Assistant Secretary for Health Care Policy, my responsibility is to develop broad health care policy and to identify and develop strategic policy initiatives. To date, my responsibilities have been directed toward the adult health care system; however, I am working closely with the Chief Deputy Secretary of the Division of Juvenile Justice to consider opportunities for joint development efforts. The responsibility for directing and managing the juvenile health care system resides with the Chief Deputy Secretary for the CDCR Division of Juvenile Justice.

The Assistant Secretary for Health Care Policy will work towards developing effective collaboration and connectivity to ensure appropriate health care standards for both juveniles and adults. Many of the problems facing the adult health care system also impact the juvenile health care delivery system and many of the strategic initiatives currently being developed for the adult health care system have direct applicability to the juvenile health care system. By using adult health care system improvements as a foundation, the Department may be able to accelerate the implementation of reforms in the juvenile health care system. Lessons learned from the class action lawsuits of the adult health care system can be reviewed and applied in the implementation of strategies for compliance with the *Farrell* lawsuit.

*Many juveniles in correctional facilities are noted to have undetected developmental, behavioral, and mental health disabilities and special needs. Senate staff was informed over three years ago that CDC "was working with the State Department of Developmental Services (DDS) to develop a process for identifying, referring, including the regional center system) and providing appropriate treatments."*

*23. What is the status of that Program? What resources are being allocated to identify, address and correct these issues?*

Youthful offenders referred by the courts, through the county probation departments, are screened by the Division of Juvenile Justice (DJJ) Intake and Court Services, for the appropriateness for placement in a DJJ facility. In general, DJJ very carefully reviews and screens youth with developmental delay of any significant

degree or youth with history of serious mental illness prior to an acceptance decision. If an Intake consultant identifies a case with developmental issues, those cases are referred to the DJJ Health Care Services section for evaluation. The DJJ works with the counties to help find alternate placements for those youth who are not appropriate for DJJ. There is ongoing work to improve our collaboration with the County Probation Departments and the Department of Mental Health to find suitable places for these youth.

DJJ works with Department of Developmental Services to evaluate wards, if it is determined by institutional clinical staff that additional developmental disability services are needed. If the ward meets the criteria and is accepted, the institution works with the parole office and the Regional Center for placements and services needed upon parole. Additionally, DJJ has the option of referring the ward for assessment and placement at Porterville Developmental Center.

DJJ has been working with the County Probation Departments and interested parties, such as, the PLO and Youth Law Center, to develop criteria for determining which youth with these issues are appropriate and which are not appropriate for DJJ placement. In addition, as part of the reform, DJJ anticipates hiring additional staff who will work with the counties and other agencies to determine the most appropriate placement, if it has been determined that the offender is not appropriate for DJJ placement, as well as assisting DJJ in tracking cases that are rejected.

24. *Is it your role to determine if mental health services for these juvenile offenders are effective, being appropriately managed and achieving their intended outcomes? How will you measure effectiveness?*

The responsibility for the operation of the juvenile Mental Health Program lies with the Chief Deputy Secretary of the Division of Juvenile Justice. Like the Division of Correctional Health Care Services, DJJ is responsible for developing systems that screen, identify and provide ongoing care for mental health services. The Division of Juvenile Justice will be able use the extensive work completed by the adult health care system in developing mental health programs and policies and monitoring systems.

The Consent Decree in the *Farrell v Hickman* lawsuit requires that DJJ develop and implement detailed remedial plans to provide all wards at CYA with adequate and effective care, treatment and rehabilitative services. The Consent Decree further requires that the remedial plan for mental health address the deficiencies identified by the mental health report. The Stipulation Regarding Safety and Welfare Remedial Plan and Mental Health Remedial Plan (Proposed) Order requires that the DJJ, in consultation with the court experts and plaintiff's counsel, will retain nationally recognized experts in juvenile mental health and rehabilitation services. These remedial plans will evaluate, revise and supplement DJJ's mental health treatment programs based on population treatment needs and evidence concerning efficacy of treatment. DJJ expects to file a revised Mental Health Plan in June 2006.



## Women

### *25. Please describe any unique efforts that are being made regarding health care services to female inmates*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

In 2005, CDCR determined that gender-responsive issues were so important that an Associate Director position and organizational section within CDCR was established under the Division of Adult Institutions. A Gender Responsive Strategies Commission (GRSC) was established as an Advisory Commission to assess and make recommendations on proposed strategies, policies and plans specific to women offenders. The DCHCS has had medical and mental health representation on the commission since its inception.

Identifying and responding to the unique health care needs of the female population is part of the strategic development of a managed health care system. Currently, female patients receive gender specific preventive screening services. The DCHCS plans to improve the medical, mental and dental health programs for female patients by developing health care policies, programs and services to respond specifically to the health care needs of female offenders.

Some proposals under consideration by the CDCR gender-responsive effort that will contain a health care component include:

- Designing a gender responsive substance abuse and emotional, physical and psychological trauma treatment program for female offenders, using a consultant contract;
- Developing and implementing comprehensive educational, vocational and health care treatment programs that consider and treat the whole person; and,
- Developing a "Bonding Mothers with Babies Program" at the California Institution for Women, to allow pregnant female offenders, who meet eligibility requirements, to bond and care for their child for an extended period, in a

specialized unit within the institutional setting. Under this proposal, health care providers will provide direct supervision and services to both mother and infant during their stay in the unit. This program would also include a well-developed discharge-planning element that would provide the patient with community contacts for continued care upon their release from prison.

*26. What are the three most important challenges related to providing appropriate health care to female inmates and how are you addressing them?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

The three most important challenges related to the provision of care for female inmates are shown below:

1. Aging Population: Currently, little programming exists to specifically address the needs of the growing geriatric female population from appropriate housing to the treatment and management of medical conditions such as osteoporosis and dementia. The Gender Responsive Strategy Commission Healthcare Sub-Committee is currently addressing various health care issues. The DCHCS is planning to develop and implement policies and procedures specific to the female population. In addition, the Right Prison-Right Mission Project will address Centers of Excellence for female offenders.
2. Health Care Contracts: The DCHCS does not have adequate contracts for the provision of health care including specialty services, mammography services and services for community correctional facilities. Lack of community correctional contracts limits the Department's ability to place non-violent female offenders in alternative models for treatment and rehabilitation. The Right Prison-Right Mission project is planning to house 4,500 female offenders in community beds.
3. Lack of coordinated case management: The DCHCS needs to implement coordinated case management systems to address the healthcare and psychosocial needs of patients. Quality improvement efforts in collaboration with the University of California, along with plans to augment Quality Management Assistance Program staff will facilitate the development of case management activities at the local institutions.



## Contracting

*27. Please describe what efforts you've made to contain the costs of outside health care contracts and consultants, including but not limited to the use of registries.*

*What measures, technical assistance and resources are you providing to the individual prisons to assist them in identifying and contracting with outside healthcare consultants for the treatment of inmates with both acute and chronic healthcare needs? How do these projected expenditures relate to budget allocations for these services?*

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The DCHCS is taking a system-wide approach to containing costs of outside health care contracts and consultants. This includes taking a serious look at the rate setting methodologies and negotiating structures currently used to determine reimbursement schedules. It also means that we are looking at the foundation of the care delivery system to design and develop systems that support cost containment efforts.

Currently a number of the strategic initiatives being undertaken by the Division should result in cost containment for contract providers. These initiatives include:

- Developing Centers of Excellence and Consolidated Care Centers, is a major system-wide strategic initiative designed to improve patient care and support cost containment efforts. The Department is developing centers at certain institutions to treat and care for our higher risk patients who require specialized treatment and services. By developing specific locations for the treatment of our higher risk patients, we will be able to develop staff expertise in these areas, thus reducing the need for consultants. In addition, locating higher-risk patients in locations where specialty services are more available should assist in containing the cost of providing these services. Improved patient management reduces complications that can be expensive.



Additionally, stabilizing patients with chronic conditions can reduce acute episodes of illness and reduce complications.

- Raising compensation levels of clinical providers to support the long-term achievement of contract registry cost containment. Compensation levels more commensurate with community salary levels can reduce vacancy rates at the institutions, which in turn reduces the Division's use of contract registry providers.
- Providing better support to the field contract management function. The DCHCS plans to place contract analysts at every institution to assure that the institutions have the staff necessary to negotiate, administer and maintain contract services.
- Improving rate setting and negotiating strategies and skills. The field and headquarters contract analysts will receive specialized contract management training and negotiation skills training that will enable staff to negotiate more competitive rates with providers.

*28. What is the current status of hemodialysis service? Will you expand in-house services or continue to contract with outside providers?*

Since being appointed in December 2005, the Director of the Division of Correctional Health Care Services and the Assistant Secretary for Health Care Policy have collaborated to develop strategic initiatives and high level priorities and work as a team in identifying and analyzing critical issues. The question above was asked of both appointees. The following response is based on this ongoing collaboration and coordination of effort and is the same for both candidates.

Currently, the DCHCS provides hemodialysis services to 161 inmates - 155 males and 6 females. The Department currently has in-house capability for 48 patients. The remaining patients receive services at nearby community dialysis facilities.

It is a priority of the DCHCS to increase the availability of dialysis services that can be provided within the secure perimeter of designated CDCR institutions. On-site hemodialysis is beneficial to the Department because it eliminates the need for community contracts for outpatient treatment, and minimizes the need for movement of patients, which increases patient well being, reduces risks to public safety and generates significant savings in transportation and custody costs.

The DHCHS is planning to expand in-house hemodialysis capacity, and is researching the feasibility of using mobile hemodialysis services.



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